109-229

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. 80.

THE COUNTY COURT OF KNOX COUNTY, MISSOURI, AND THE JUDGES THEREOF, PLAINTIFFS IN ERROR,

vs.

THE UNITED STATES EX REL. SAMUEL C. DAVIS.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

FILED OCTOBER 9, 1880.

1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judge of the circuit court of the United States for the eastern district of Missouri, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court before you, at the September term, 1879, thereof, between The United States ex rel. Samuel C. Davis, relator, vs. the County Court of Knox County, Missouri, and the Judges thereof, respondents, a manifest error hath happened, to the great damage of the said respondents, as by their complaint appears:

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States of America, together with this writ, so that you have the same at Washington on the 2nd Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief-Justice of the Supreme Court of the United States, this 9th day of March, in the year of our Lord one thousand eight hundred and eighty.

Issued at office in the city of St. Louis, with the seal of the circuit court of the United States for the eastern district of Missouri, dated as aforesaid.

[SEAL.] M. M. PRICE,
Clerk Circuit Court United States, Eastern District of Missouri.
By A. P. SELBY, *Deputy.*

Allowed by—

SAMUEL TREAT, *Judge.*

1½ *Return to writ.*

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

In obedience to the command of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the *the* record and proceedings in the within-entitled case, with all things concerning the same.

In witness whereof, I hereto subscribe my name and affix the seal of said circuit court, at office in the city of St. Louis, this 20th day of September, A. D. 1880.

[SEAL.] M. M. PRICE,
Clerk of said Court.
By A. P. SELBY, *Deputy.*

(Indorsed:)No. . United States circuit court, eastern district of Missouri. U. S. ex rel. Sam'l C. Davis vs. Knox County Court. Writ of error to the circuit court of the United States for the east. dist. of Missouri. Returned and filed day of , 187 . , clerk.

13719——1

1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judge of the circuit court of the United States for the eastern district of Missouri, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court before you, at the September term, 1879, thereof, between The United States ex rel. Samuel C. Davis, relator, vs. the County Court of Knox County, Missouri, and the Judges thereof, respondents, a manifest error hath happened, to the great damage of the said respondents, as by their complaint appears:

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States of America, together with this writ, so that you have the same at Washington on the 2nd Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief-Justice of the Supreme Court of the United States, this 9th day of March, in the year of our Lord one thousand eight hundred and eighty.

Issued at office in the city of St. Louis, with the seal of the circuit court of the United States for the eastern district of Missouri, dated as aforesaid.

[SEAL.] M. M. PRICE,
Clerk Circuit Court United States, Eastern District of Missouri.
By A. P. SELBY, *Deputy.*

Allowed by—

SAMUEL TREAT, *Judge.*

1½ *Return to writ.*

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

In obedience to the command of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the *the* record and proceedings in the within-entitled case, with all things concerning the same.

In witness whereof, I hereto subscribe my name and affix the seal of said circuit court, at office in the city of St. Louis, this 20th day of September, A. D. 1880.

[SEAL.] M. M. PRICE,
Clerk of said Court.
By A. P. SELBY, *Deputy.*

(Indorsed:)No. . United States circuit court, eastern district of Missouri. U. S. ex rel. Sam'l C. Davis vs. Knox County Court. Writ of error to the circuit court of the United States for the east. dist. of Missouri. Returned and filed day of , 187 . , clerk.

2 The United States of America to Samuel C. Davis, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to a writ of error, filed in the clerk's office of the circuit court of the United States for the eastern district of Missouri, wherein the County Court of Knox County, Missouri, and the Judges thereof are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Samuel Treat, judge of the circuit court of the United States for the eastern district of Missouri, this 9th day of March, in the year of our Lord one thousand eight hundred and eighty.

SAMUEL TREAT,
Judge United States Circuit Court, Eastern District of Missouri.

2½ UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

I have executed this writ, by delivering a copy thereof to George H. Shields, of the firm of Henderson & Shields, attorneys of record for the within-named Samuel C. Davis, at St. Louis, in said district, on the 7th day of August, 1880.

FELIX COSTIE,
U. S. Marshal, E. D. Mo.,
By JAMES B. GEGGE,
Deputy.

Service, 2.00; 1 mile travel, 06—$2.06.

(Indorsed:) United States circuit court, eastern district of Missouri. U. S. ex rel. Saml. C. Davis vs. Knox County Court. Citation. Filed March 9, 1880. M. M. Price, clerk. For return.

3 UNITED STATES OF AMERICA,
Eastern District of Missouri, sct.

In the circuit court of the United States in and for said district.

Be it remembered that on the 23rd day of September, A. D. 1878, at a regular stated term of the circuit court of the United States, in and for the eastern district of Missouri, the following petition for a writ of mandamus was filed in said court, to wit:

Petition for mandamus.

United States circuit court, eastern district of Missouri. September term, A. D. 1878.

UNITED STATES EX REL. SAM'EL C. DAVIS, plaintiff, *vs.* KNOX COUNTY, IN THE STATE OF MISSOURI, and the County Court thereof, defendants.	No. 1188.

The plaintiff, your petitioner, now comes and shows to the court that on

the 22nd day of May, A. D. 1878, at the March term A. D. 1878, of this honorable court, he obtained a judgmen' therein against Knox County, in the State of Missouri, for $16,975.35 ($10,654.61 whereof bears 7 per cent. interest from the date of rendition of said judgment, and the balance bears 6 per cent. interest from the date of rendition thereof), and also for costs of said suit.

4 That said judgment was rendered for and on account of certain past-due bonds & coupons in the petition in said case described, being a part of certain bonds issued by said county of Knox, dated on the first of February, A. D. 1868, and various other dates thereafter, whereby said county acknowledged itself indebted to and promised to pay the Missouri & Mississippi Railroad Company, or bearer, the said bonds & interest coupons in payment for stock subscribed to said company by said county of Knox, under the authority of the laws of the State of Missouri, and an act of the general asssembly of the State of Missouri, entitled, "An act to incorporate the Missouri & Mississippi Railroad Company," approved Feb'y 28, 1865.

Your petitioner further shows that since the rendition of said judgment, to wit, on the tenth day of August, A. D. 1878, he caused demand to be made upon said county of Knox for payment of said judgment, and payment thereof was refused.

Your petitioner further represents that on said 10th of August, A. D. 1878, he made demand upon the county court of said county, and upon William Rule, Casper Fetters, and Thomas Merriwether, justices thereof, for payment of said judgment, interest, and costs, and in default of such payment that the said county court and the justices thereof proceed to levy a special tax upon all the property in said county made taxable by

5 law for such purpose in said county, as would be sufficient to pay off and discharge said judgment with interest and costs, and the said county court and the justices thereof refused payment of said judgment or any part thereof, and also refused and neglected, and still refuse and neglect to levy said tax, or any tax whatever for said purpose.

And your petitioner avers that he verily believes that said court and the justices thereof will refuse payment of said judgment or to levy any tax therefor unless compelled so to do by order of this court; and your petitioner further represents that on the said tenth day of August, 1878, he demanded of said county court and the justices thereof that said court should issue and deliver, or cause to be issued and delivered, to the plaintiff a county warrant on the co'nty treasury of said Knox County for the amount of said judgment, interest, and costs, to be paid out of the general funds of the county on presentation, and that if there be not sufficient money in the county treasury to pay said judgment, interest, & costs that the said county court would cause to be levied and collected, as required by law, an amount of money sufficient to pay said judgment, interest, & costs, all of which said county court refused & still refuses to do; that said demand for payment, and for said county warrant, and for said levy & interest was made upon said county court and the justices thereof

6 during the session of said county court in open court, and that to his demand so made was attached a certified copy of said judgment, showing the amount thereof, with interest, and the amount of costs accrued and taxed by the clerk of this court.

The plaintiff further represents that by the law of the State of Missouri it is the duty of said county court to issue to the plaintiff said county warrant, & to pay said judgment, interest, and costs by the levy & collection of said taxes, and in no other way; that said county has no funds except such as may be raised by taxation for such purpose, no' has said county any property subject to execution upon which your petitioner can levy for the satisfaction of said judgment; that in consequence of such refusal & neglect of said county court to issue such county warrant to plaintiff & to levy said tax & cause the same to be collected your petitioner is without adequate remedy at law to obtain payment of said judgment, or any part thereof; that said demand on said county court was made in writing, and said demand contained a notification to said county court and to said justices thereof that if they failed to issue and deliver to this plaintiff such warrant on the county treasurer on account of said judgment, interest, & costs, and failed to pay said judgment, interest, & costs out of any funds in the county treasury, or failed to levy and collect said tax to pay
7 said judgment and warrant, as required by law, that this plaintiff would on the first day of September term, A. D. 1878, of this honorable court, or as soon thereafter as a hearing can be had, apply to said court for a perem'tory writ of mandamas to compel said County Court of Knox County to perform their said duty according to law, a copy of which said demand and notification is herewith filed and made a part of this petition.

The plaintiff further represents no part of said judgment has been paid, but the whole of it is yet due and owing to him. Your petitioner further shows that there is not sufficient money in the treasury of said county to pay said judgment and said warrant, wherefore your petitioner prays that a perem'tory writ of mandamus issue from this court directed to the County Court of Knox County, and to William Rule, Casper Fetters, and Thomas Merriwether, justices thereof, requiring them to issue a warrant in favor of the plaintiff on the county treasurer, payable out of the general funds of the county, for said judgment, interest, and costs, and to immediately levy and cause to be collected a tax on all the property in said county subject to taxation for such purpose, according to law, sufficient to pay off and discharge said warrant & said judgment, interest, and costs, and that they apply the same, when collected, to the payment thereof.

SAMUEL C. DAVIS,
By HENDERSON & SHIELDS,
His Attorneys.

8 STATE OF MISSOURI,
City of St. Louis, ss:

George H. Shields, one of the above-named attorneys for Samuel C. Davis, the plaintiff therein, on his oath says that the matter and things as stated in the foregoing petition he believes to be true.

GEO. H. SHIELDS.

Subscribed & sworn to before me this 21st day of September, A. D. 1878.

M. M. PRICE, *Clerk*,
By T. L. CRAWFORD, *D. C.*

9 The demand made upon said county court is in words and figures following, to wit:

Demand.

In the United States circuit court for the eastern district of Missouri.

SAMU'L C. DAVIS
vs.
KNOX COUNTY, IN THE STATE OF MISSOURI. } No. 1188.

To the County Court of Knox County, Missouri, and to William Rule, Casper Fetters, and Thomas Merriwether, judges of the county court of Knox County, in the State of Missouri:

You will please take notice, that on the 22nd day of March, 1878, at the March term, A. D. 1878, of the circuit court of the United States for the eastern district of Missouri, that Samuel C. Davis, the plaintiff in the above-entitled case, obtained judgment against Knox County, in the State of Missouri, as defendant, which is entered upon the records of
10 said court, for the sum of $16,975.35 ($10,654.61 of which judgment bears 7 per cent. interest per annum from the date of rendition thereof, and the balance thereof bears six per cent. interest from the date of rendition thereof), and also for costs in said suit laid out and expended. That said judgment was rendered for and on account of certain past-due bonds and coupons in the petition in said case described, being a part of certain bonds made, executed, negotiated, and delivered by the County Court of Knox County, and dated on the first day of February, A. D. 1868, and various dates thereafter, whereby said county acknowledged itself indebted and firmly bound to and promised to pay to the Missouri & Mississippi Railroad Company, or bearer, the sum of one hundred & eighty thousand dollars, by various bonds of the denominations of $500 and $1,000, dated on the days aforesaid, and recited in each of said bonds that said county would pay the same, at certain future times therein stated, at the National Bank of Commerce, in the city and State of New York, together with interest thereon from date, at the rate of seven per cent. per annum, which interest should be payable annually on the first day of February of each year thereafter, on the presentation of said interest-coupons thereto attached. That said bonds were issued to said railroad company in full payment of the subscription theretofore made to the capital
11 stock of said railroad company by the said defendant, made in pursuance of the statutes of the State of Missouri authorizing said subscription and the issue and delivery of said bonds, and in pursuance of and by authority of an act of the general assembly of the State of Missouri, entitled "An act to incorporate the Missouri & Mississippi Railroad Company," and approved February 20th, A. D. 1865, and pursuant to orders of the county court of said county of Knox.

That the said county court of said county failed to cause the matured coupons of said bonds and matured bonds belonging to the plaintiff to be paid on their maturity, and thereupon the plaintiff caused said suit thereon to be instituted, and the judgment aforesaid was obtained thereon.

You are further notified that under the laws of the State of Missouri it is made the duty of the county court of said county of Knox to levy and

cause to be collected a tax on the property of said county in order to meet the payments due on said bonds and coupons and to pay the aforesaid judgment of this plaintiff, which is rendered for and predicated upon past-due bonds and past-due interest coupons, which constitute a part of the bonds issued as aforesaid; that it is the duty of said county court to enforce the laws of the State, and in this behalf to order and compel the county treasurer of said county to apply the income from taxes
12 heretofore assessed and collected for that purpose and now held by him to the payment of plaintiff's aforesaid judgment.

That it is the duty of said County Court of Knox County to issue to the plaintiff a county warrant on the treasury of said Knox County for the amount of said judgment, interests, and costs.

The plaintiff therefore now comes into the County Court of Knox County and exhibits a certified copy of his judgment and bill of costs aforesaid, and demands of this court and the judges thereof that any order or orders heretofore made by which said county treasurer is restrained from paying said judgment, or any interest coupons of said bonds, or said bonds, be rescinded and repealed. The plaintiff further asks and demands of said County Court of Knox County that said court will issue and deliver, or cause to issued and delivered to the plaintiff, a county warrant on the county treasury of said Knox County for the amount of said judgment, interest, and costs, to be paid out of the general funds of the county on presentation, and further he demands that if there be not sufficient money in the county treasury to pay said judgment, interests, and costs that the said county court will cause to be levied and collected as required by law an amount of money sufficient to pay said judgment, interests, and costs. The plaintiff hereby notifies said County Court of Knox
13 County and the judges thereof that in case of refusal to comply with his request and demand as herein made he will on the first day of next September term, A. D. 1878, of the United States circuit court for the eastern district of Missouri, to begun and held at the city of Saint Louis, Missouri, on the third Monday in September, 1878, or as soon thereafter as hearing can be had, apply to the said court for a perem'tory writ of mandamus to compel said County Court of Knox County thereto as herein demanded.

June 24th, A. D. 1878.

SAMUEL C. DAVIS, *Plaintiff*,
By HENDERSON & SHIELDS, *His Att'ys.*

STATE OF MISSOURI,
City of St. Louis, ss:

George H. Shields, one of the above-named attorneys for Samuel C. Davis, the plaintiff therein, on his oath says that the matters and things as stated in this notice and demand he believes to be true.

GEO. H. SHIELDS.

Subscribed and sworn to before me this 3rd day of August, A. D. 1878. Witness my hand and notarial seal.

[SEAL.] HUGO MUENCH,
Notary Public, City and County of St. Louis, Missouri,
(*Term expiring June* 21, 1882).

14 STATE OF MISSOURI,
City of St. Louis, ss:

George H. Shields, on his oath, states the he served the within notice & demand by reading the to the County Court of Knox County, in the State of Missouri, while the said court was in session, in open court, and by exhibiting to said county court a certified copy of the judgment & cost bill herein mentioned, in open court, and by delivering to each of the said William Rule, Caspar Fettes, & Thomas J. Merriwethe, judges of said county court, a copy of this notice & demand, and by delivering to Caspar Fetters, presiding justice of said county court, a certified copy of said judgment & bill of costs, while the said judges were holding a session of the county court aforesaid, in open court. All done in Edina, Knox County, Missouri, this 5th day of August, 1878.

GEO. H. SHIELDS.

Subscribed & sworn to before me this 10th day of August, A. D. 1878.
[SEAL.] HUGO MUENCH,
Notary Public, City & County of St. Louis, Mo.,
(*Term expiring* 21, 1882.)

15 And thereupon the following order was made and appears of record in said cause, to wit:

Order allowing alternative writ.

UNITED STATES EX REL. SAMUEL C. DAVIS, relator,
vs.
KNOX COUNTY, IN THE STATE OF MISSOURI, and the County Court thereof, respondents. } 1188.

Now comes the said relator, by Messrs. Henderson & Shields, his attorneys, and files his information herein for a peremptory writ of mandamus, together with a copy of a demand made upon said county court to levy a special tax and to deliver to plaintiff a warrant on the county treasurer to pay the judgment herein, and thereupon, the premises being considered, it appears to the court that at the March term, 1878, of this court, and on the 22nd day of May, 1878, the said relator obtained a judgment against Knox County for sixteen thousand nine hundred and seventy-five dollars and thirty-five cents ($16,975.35); that said judgment was rendered for and on account of certain past-due bonds and coupons issued by said Knox County to the Missouri and Mississippi Railroad Company, bearer, in payment for stock subscribed to said company by said county,
16 under authority of the acts of the general assembly of the State of Missouri; that said relator has made demand on said county for the payment of said judgment and payment thereof was refused; that demand was made upon William Rule, Casper Fetters, and Thomas Merriweather, justices of the county court of Knox County, to levy a special tax upon all the property in said county made taxable by law sufficient to pay off and discharge said judgment, interest, and costs; that said justices refuse and neglect to levy said tax or any tax whatever for said purpose; that a demand has also been made on said county court to issue and deliver

or cause to be issued and delivered to said relator, a county warrant on the treasurer of said Knox County for the amount of said judgment, interest, and costs, to be paid out of the general funds of the county, all of which said county court refuses to do; and this court being fully advised of and concerning the premises, doth deny the peremptory writ of mandamus as prayed; and doth further order the said William Rule, Casper Fetters, and Thomas Merriweather, justices comprising the County Court of Knox County, in the State of Missiouri, and their successors in office, *do* levy and assess, or cause to be levied and assessed, a special tax sufficient to pay off and satisfy said judgment, interest, and costs, and
17 deliver to the said relator a county warrant on the county treasurer of said county, payable out of the general funds for the said county for said judgment, interest, and costs, or that they, said County Court of Knox County and the justices thereof, show cause, if any they have, before this court on the first day of the next term thereof, to be begun and holden on the third Monday of March, 1879, why they should not so do.

18 And thereafter, and on the 23rd day of January, A. D. 1879, there was issued an alternative writ of mandamus in said cause, in words and figures following, to wit:

Alternative writ of mandamus.

THE UNITED STATES OF AMERICA,
Eastern District of Missouri, set:

The President of the United States of America to the County court of Knox County, in the State of Missouri, and the Justices thereof greeting:

Whereas it has been suggested to our circuit court of the United States for the eastern district of Missouri that Samuel C. Davis, the relator, on the 22d day of May, 1878, at the March term of this court, obtained a judgment therein against Knox County, in the State of Missouri, for sixteen thousand nine hundred and seventy-five $\frac{35}{100}$ dollars, ten thousand six hundred and fifty-four $\frac{61}{100}$ dollars whereof bears seven per cent. interest, and the balance six per cent. interest, from the date of the rendition thereof, and also for costs of suit; that said judgment was rendered for and
19 on account of certain past-due bonds and coupons issued by said county of Knox, dated on the first day of February, 1868, and various other dates thereafter, whereby said county acknowledges itself indebted and promised to pay the Missouri and Mississippi Railroad Company, or bearer, the said bonds and interest-coupons in payment for stock subscribed to said company by said county of Knox, under the authority of the laws of the State of Missouri, and an act of the general assembly of the State of Missouri, entitled "An act to incorporate the Missouri & Mississippi Railroad Company," approved February 28, 1865; that since the rendition of said judgment, to wit, on the 10th day of August, 1878, he causes demand to be made upon said county of Knox for payment of said judgment, and payment thereof was refused; that on said 10th day of August, 1878, he made demand upon the county court of said county and upon William Rule, Casper Fetters, and Thomas Merriwether, justices thereof for payment of said judgment, interests, and costs, and in de-

fault of such payment, that the County Court and the justices thereof proceed to levy a special tax upon all the property in said county made taxable by law for such purpose in said coainty, as would be sufficient to pay off and discharge said judgment with interest and costs, and the said county court and the justices thereof refused payment of said judgment or any part thereof, and also refused and neglected, and still refuse and neglect to levy said tax or any tax whatever for said
20 purpose; that said relator verily believes that said court and the justices thereof will refuse payment of said judgment, or to levy any tax therefor unless compelled to do so by order of this court; that on the said 10th day ofAugust, 1870, he demanded of said county court and the justices thereof that said court should issue and deliver, or cause to be issued and delivered to the relator, a county warrant on the county treasury of said Knox County for the amount of said judgment, interest, and costs, to be paid out of the general funds of the county on presentation, and that if there be not sufficient money in the county treasury to pay said judgment, interest, and costs, that the said county court would cause to be levied and collected, as required by law, an amount of money sufficient to pay said judgment, interest, and costs, all of which said county court refused and still refuse to do; that said demand for payment and for said county warrant and for said levy and collection was made upon said county court and the justices thereof during the session of said county court in open court; that to his demand so made was attached a certified copy of said judgment, showing the amount thereof with interest, and the amount of costs accrued and taxes by the clerk of this court; that by the laws of the State of Missouri it is the duty of said county court to issue to the relator said county warrant, and to pay said judgment, in-
21 terest, and costs by the levy and collection of said taxes, and in no other way; that said county has no funds except such as may be raised by taxation for such purpose, nor has said county any property subject execution upon which relator can levy for the satisfaction of said judgment; that in consequence of such refusal and neglect of said county court to issue such county warrant to relator, and to levy said tax and cause the same to be collected, the relator is without adequate remedy at law to obtain payment of said judgment or any part thereof; that said demand contained a notification to said county court and to the justices thereof that if they failed to issue and deliver to relator such warrant on the county treasurer on account of said judgment, interest, and costs, and failed to pay said judgment, interest, and costs out of any funds in the county treasury, or failed to levy and collect said tax to pay said judgment and warrant as required by law, that relator would, on the first day of the September term, 1878, of this court, or as soon thereafter as a hearing could be had, apply to said court for a perem'tory writ of mandamus to compel said County Court of Knox County to perform their duty according to law; that no part of said judgment has been paid, but the whole of it is due and owing to said relator; and whereas such proceedings were had in our said court that a perem'tory writ of mandamus was denied and an alternative writ ordered to be issued as prayed for:

22 Now, we being that due and speedy justice be done in the premises, do command you, the County Court of Knox County and

the Justices thereof, that you forwith levy and assess, or cause to be levied and assessed a sufficient tax to pay off and satisfy said judgment, interest, and costs, and deliver to said relator a warrant on the county treasurer of said county, payable out of the general funds of said county for said judgment, interest, and costs, or that they, the said County Court of Knox County and the Justices thereof, show cause, if any they have, before our said court, on the first day of the next term thereof, to be begun and held at the city of St. Louis, on the third Monday of March next, why you refuse so to do.

Witness the honorable Morrison R. Waite Chief Justice of the Supreme Court of the United States, the 23rd day of January, A. D. 1879.

Issued at office in the city of St. Louis, under the seal of said circuit court, the day and year last aforesaid.

[SEAL.]

M. M. PRICE, *Clerk*,
By A. P. SELBY, *Deputy*.

23 (Endorsed on said writ is the following return of service:)

UNITED STATES OF AMERICA,
Eastern District of Missouri ss:

I return this writ, having executed the same by delivering to each of the three county justices of Knox County, Missouri, namely: Benjamin Botts, Antony Hunolt, and Marion Hoagland, one alternative writ of mandamus, on the 4th day February, A. D. 1879, in the county of Knox, in the above district, and the said county court being then and there in open session.

H. W. LEFFINGWELL,
U. S. Marshal,
By BENJAMIN BOWEN, *Deputy*.

24 And afterwards, to wit, on the 17th day of March, A. D. 1879, the following return was filed to said alternative writ of mandamus:

Return to alternative writ.

In the United States circuit court for the eastern district of Missouri.
March term, A. D. 1879.

In the matter of alternative writ of mandamus, ex rel. Samuel C. Davis against The County Court of Knox County and the Justices thereof.

Now comes the justices of said county court, and for return to said writ say:

(1.) That the bonds refer'ed to in the writ as having been issued to the Missouri and Mississippi Railroad Company, and as basis of the judgment and indebtedness against said county, are null and void and constitute no valid indeb'edness against said county in this:

25 The bonds show upon the'r face they were issued on the first day of Februa'y, A. D. 1868, and that the law by which the said court was authorized to issue them to the said railroad company was fo'med on the 20th day of February, 1865, and they do not purport to have been issued by the county court after being authorized so to do by a vote of two-thirds of the qualified voters of Knox County as required by the constitution of this State in force at the time of this issue.

(2.) And for further return to said writ defendants say that by the law refer'ed to in the writ by the authority of which said bonds on which the judgment desired is founded, the County Court of Knox County was and is prohibited from levying a tax in any year for the sum of more than one-twentieth of one per cent. upon the taxable property of said county for the purpose of paying in whole or in part, principal or interest, any bonds that might be issued to said railroad company by authority of said law. That if the court shall so adjudge they stand ready to make annual levy of one-twentieth of one per cent. upon the taxable property of said county for the purpose of applying the proceeds thereof pro rata to relator's judgment and other judgments and bonds of the same issue.

26 That said bonds carried upon their face evidence of this limitation upon the power of the County Court of Knox County to levy a tax for their payment at the time they were issued, and purchasers and receivers of them took and hold them notice thereof.

In consideration of the premises aforesaid defendants say they ought not be compelled to issue a warrant or levy a tax, as commanded in the alternative writ, and having made full return thereto ask to go hence without day and have judgment for their costs in this behalf expended.

WAGNER, DYER & EDWARDS,
For Def'ts.

Now at this day comes Benjamin Botts, Anton Hunolt, and Marion Hoaglan, justices of county court, who, upon their oaths state the facts herein alleged to be true and correct, as they believe.

Sworn to before me this 12th day of March, 1879.

FRANK P. HALL,
Clerk County Court.

27 And afterwards, to wit, on the 31st day of March, A. D. 1879, there was filed a demurrer to the return to the alternative writ of mandamus, said demurrer being in words and figures following:

Demurrer to return to alternative writ.

In the circuit court of the United States for the eastern district of Missouri.

SAMUEL C. DAVIS
v.
THE COUNTY COURT OF KNOX COUNTY, MO., and the Justices thereof. } March term, 1879.

Now at this day comes the relator herein and demurs to the return to the alternative writ of mandamus herein for the reasons following:

1st. That said return does not state facts which constitute any defense to plaintiff's action herein.

2nd. That said return does not state any facts which show cause why the alternative writ of mandamus herein should not be peremptory.

28 3rd. That said return does not show any facts which constitute an excuse for said judges refusing to obey the command of the alternative writ herein.

Wherefore relator prays judgment hereon, and that a peremp'tory writ of mandamus should issue by this court commanding said County Court and the Justices thereof to perform their duty, as prayed in his petition, and as set forth in said alternative writ of mandamus.

HENDERSON & SHIELDS,
For Relator.

29 And afterwards, to wit, on the 19th day of April, A. D. 1879, at a regular stated term of said court, the following proceedings were had and appear of record in said cause, to wit:

Judgment on demurrer.

U. S. EX REL. SAMUEL C. DAVIS,
v.
THE COUNTY COURT OF KNOX COUNTY AND the Justices thereof, respondents.

Now at this day comes the relator herein, by Henderson and Shields, his attorneys, and the respondents, by Wagner, Dyer & Enmons, their attorneys, and the cause being submitted to the court, on the demur'er of relators to the return of respondents to the alternative writ of mandamus herein, the court having considered said demur'er, sustains the
30 same; respondents declining to plead any further herein, judgment on demur'er is accordingly rendered for relator, and the court having considered the premises herein doth order that the peremptory writ of mandamus of this court be issued herein, directed to the County Court of Knox County, Missouri, and the Justices thereof, commanding them to forthwith make out, deliver, or cause to be made out and delivered to the relator herein (or to Henderson and Shields, his attorneys of record herein) a warrant on the county treasurer of Knox County, Missouri, payable out of the general funds of said Knox County, in the county treasury of said county, for the amount of the judgment, interest, and costs herein, and further commanding said county court and the justices thereof that if there be not sufficient funds in the county treasury of said Knox County to pay said warrant, that the said county court and justices thereof do forthwith levy and cause to be collected a special tax of one-twentieth of one per cent. (in addition to the general levy for county purposes provided by law), on the property subject to taxation in said county, according to law, to raise such sums as may be required, in addition to the said general reve-
31 nue of said county, to pay such warrant. It is also further ordered and adjudged that relator do have and recover of respondents his costs herein, and that he have thereof execution.

32 And afterwards, to wit, on the first day of May, A. D. 1879, there was issued in said cause a peremptory writ of mandamus in words and figures following, to wit:

Peremptory writ of mandamus.

THE UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

The President of the United States of America to the County Court of Knox County, in the State of Missouri, and the Justices thereof, greeting:

Whereas it has heretofore been suggested to our circuit court of the United States for the eastern district of Missouri that Samuel C. Davis, the relator, on the 22d day of May, 1878, at the March term, 1878, of our said court, recover' a judgment against Knox County, in the State of Missouri, for the sum of sixteen thousand nine hundred and seventy-five $\frac{35}{100}$ dollars, ten thousand six hundred and fifty-four $\frac{61}{100}$ dollars whereof bears seven per cent. interest and the balance six per cent. from the date of the rendition thereof, and also for costs of suit;

And whereas, by a writ of alternative mandamus issued out of our said court on the 23d day of Janua'y, 1879, and to you directed, you
33 were commanded forthwith to levy and assess or cause to be levied or assessed a sufficient tax to pay off and satisfy said judgment, interest, and costs, and deliver the said relator a warrant on the county treasurer of said county, payable out of the general funds of said county, for said judgment, interest, and costs, or that you show cause before said court why you refused so to do;

And whereas, at the March term, 1879, of said court, and on the 21st day of April, 1879, it was adjudged that you had certified and returned no sufficient cause why you refused to obey said writ of alternative mandamus issued herein against you.

Now, therefore, you the said County Court of Knox County and the Justices thereof, are hereby commanded to forthwith make out and deliver or cause to be made out and delivered to said relator, or to Henderson and Shields, his attorneys of record, a warrant on the county treasurer of Knox County, Missouri, payable out of the general funds of said Knox County, in the county treasury of said county, for the amount of said judgment, interest, and costs; and you are further commanded that if there be not sufficient funds in the treasury of said Knox County to pay said warrant, then that you forthwith levy and cause to be collected a special tax of one-twentieth of one per cent. in addition to the general levy for county purposes provided by law, on the property subject to taxation in said county such sum as may be required in addition to the said
34 general revenue of said county to pay said warrant, and that you certify complete and perfect obedience of this writ to our said court on the first day of the next term thereof, to be begun and holden on the third Monday of September, 1879.

Witness the honorable Morrison R. Waite, Chief-Justice of the Supreme Court of the United States, the 1st day of May, A. D. 1879.

Issued at office in the city of St. Louis, under the seal of said circuit court the day and year last aforesaid.

[SEAL.]

M. M. PRICE, *Clerk*,
By A. P. SELBY, *Deputy*.

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

I return this writ: That I have delivered one original writ of peremptory mandamus in this cause to each one of the justices composing the County Court of Knox County, Missouri, namely, Benjamin Botts, Anthony Hunolt, and Marion Hoagland, while said county court was in session, on the 6th day of May, A. D. 1879, in Edina, Knox County, Missouri, in the above district.

H. W. LEFFINGWELL,
U. S. Marshall,
By BENJAMIN BOWEN, *Deputy.*

35 And afterwards, to wit, on the 16th day of September, A. D. 1879, there was filed a return to the foregoing peremptory writ of mandamus, said return being in words and figures following, to wit:

36 THE UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

Return to peremptory writ.

In the circuit court of the United States for said district. Sept. term, A. D. 1879.

IN THE MATTER OF SAMUEL C. DAVIS, PL'FF,
v.
COUNTY COURT OF KNOX CO., MO., DEF'T. } 1188.

Now, at this day comes the County Court Judges of Knox County, Missouri, parties defendant in the above-entitled cause, and make this, their return to the peremptory writ of mandamus, issued in this cause and this court May 1st, 1879, and made returnable to this court Sept. 15th, 1879. The undersigned judges respectfully represent and show to this court that in obedi*a*nce to said writ that they did, on the 9th day of May, 1879, make an order and caused the same to be spread upon the records of the County Court of Knox County, Mo., a duly certified copy of which record is hereto attached and marked "Exhibit A", directing the prosecuting attorney of Knox County to present a petition to the circuit court of said county praying for an order for the levy of a tax of one-twentieth of one per cent. ($\frac{1}{20}$ of %) upon the taxable property of Knox County Missouri, as the same was commanded by said writ of peremptory
37 mandamus.

That afterwards, and on the 3rd day of June, A. D. 1879, the prosecuting att'y of Knox County presented his petition in due form to the circuit court of said county, wherein it was ordered by the circuit court of said county "that the County Court of Knox County Mo., make a special levy of $\frac{1}{20}$ of 1 % tax on all the taxable property of said Knox County, Missouri, for the year 1879 for the purpose of paying bonds and coupons issued to the Missouri and Mississippi Railroad Company as prayed for by petition," a duly certified copy of which petition and order

of the circuit court as aforesaid *and* is hereto attached and marked "Exhibit B."

That afterwards, and on the 6th day of June, A. D. 1879, at an adjourned term of the county court, called and held specially for that purpose, in compliance with said order of court, as aforesaid, and in *said order of court as aforesaid, and in* strict obedience to said peremptory writ of mandamus, caused to be assessed and levied upon all the taxable property of Knox County, Missouri, a special tax of one-twentieth of one per cent., which, when collected, shall be applied in the discharge of such judgment, a duly certified copy of which order and record is hereto attached, and marked "Exhibit C."

38 The undersigned would respectfully make further return and show to your honorable court that it is impossible for them to certify complete and perfect obedience to said peremptory writ of mandamus; that said writ commanded them to caused to *to* be made out and delivered to relator a warrant on the county treasurer of Knox County, Missouri, payable out of the general funds of said Knox County. That on the first day of the May term of the county court of Knox County, Missouri, and prior to the service of said writ, the undersigned county court of Knox County, Missouri, made an order and caused the same to be spread upon the records of the county court of said county, seperating, apportioning, and subdividing the revenues of such county in accordance with the terms and provisions of an act of the legislature of the State of Missouri entitled "An act for the better protection of the county revenue funds of the State," approved M'ch 19th, 1879, a duly certified copy of which order is hereto attached and marked "Exhibit D."

That under the terms and provisions of said act of the legislature the funds in Knox County since prior to the service of said writ of mandamus are and have been, "pauper fund," "road and bridge fund," "fund for the payment of the salary of county officers," "fund for the payment of

39 grand and petit/ jurors, judges, and clerks of election, and witnesses for the grand jury," and "contingent fund."

That in addition to these several funds for specific purposes there is a fund arising out of the special levy of $\frac{1}{20}$ of 1% to pay Missouri and Mississippi Railroad indebtedness. The Judges of the County Court of Knox County, Missouri, def's herein, respectful'y statel in return to said writ of peremptory mandamus, that they are estop'ed from rendering & certifying perfect obedience to the same for the reason stated, that there is no general fund in said county; that they have made the levy as commanded by said writ, and that they are ready and willing to issue a warrant to relator on the county treasurer of Knox County, Missouri, payable out of the Missouri and Mississippi Railroad fund—that is to say, the fund arising out of the assessment, levy, and collection of $\frac{1}{20}$ of 1% tax on all the property of Knox County, Missouri, subject to taxation; all of which is most respectfully submitted.

CASPER FETTERS,
ANTONE HUNALT,
JOHN CALLAWAY,
Judges County Court of Knox County, Missouri.
Per L. F. COTTEY, *Their At'y.*

40 Said exhibits referred to in the foregoing return are in words and figures following, to wit:

EXHIBIT A.—*Certified copy of record.*

(On margin:) Exhibit A.

STATE OF MISSOURI,
County of Knox, ss:

May term, 1879.

In the county court of said county, on the 9th day of May, 1879, the following other proceedings were had, viz:

Now, at this day the court considers the matter of making a levy to pay Missouri & Missi'ppi Railroad indebtedness; and the court being satisfied that there exist' a neces'ity for the assessment, levy, and collection of a tax of $\frac{1}{2}\frac{1}{0}$ of 1 % upon the taxable property of Knox County for the purpose of paying the bonds and coupons due on account of the subscription to Missouri & Mississippi Railroad Company, it is ordered by the court that the prosecuting att'y of Knox County present a petition to the circuit court, or the judge thereof in vacation, setting forth the facts and specifying the reasons why such tax should be assessed, levied, and collected in accordance with an act of the general assembly of the State
41 of Missouri entitled "An act concerning the assessment, levy, and collection of taxes, and the disbursement thereof," approved March 8th, 1879.

(On margin:) Exhibit A.

STATE OF MISSOURI,
County of Knox, ss:

I, Frank P. Hall, clerk of the county court in and for said county, hereby certify the above and foregoing to be a true copy of the proceedings of our said county court on the day and year above written as the same appears of record in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at office in Edina, Mo., this 2nd day of Sept., 1879.

[SEAL.] FRANK P. HALL,
Clerk County Court.

EXHIBIT B.

STATE OF MISSOURI,
County of Knox, ss:

In the circuit court within and for the 4th judicial circuit in & for the aforesaid county and State, before the Hon. John C. Anderson, sole judge thereof, on the 3rd day of June, A. D. 1879, the following preceedings were had to wit:

(On margin:) Exhibit B.

Petition of prosecuting attorney.

To the hon. Circuit Court of Knox County, Missouri:

42 In obedience to an order of the County Court of Knox County, State of Missouri, made and entered of record in the proceedings of said county court at the May term thereof, A. D. 1879, and on the fifth day of said term, being the 9th day of May, 1879, a duly certified copy of which said order is hereto attached, the undersigned, prosecuting attorney of Knox County, Missouri, by this his petition respectfully shows and represents to the honorable circuit court of Knox County, Missouri, that the county of Knox, in the State of Missouri, has heretofore, through her legally constituted agents, issued certain bonds, with coupons attached, to the Missouri and Mississippi Railroad Company; that said bonds & coupons were issued in conformity with the laws of the State of Missouri in such cases made and provided; that the law under which said bonds & coupons were issued expressly provided that there should be assessed, levied, and collected a tax of one-twentieth ($\frac{1}{20}$) of one per cent. an'ually from the assessed taxable property of said Knox County for the purpose of paying off and discharging said bonds & coupons; and that no provisions is made in the law under which said bonds and coupons were issued by which any other or greater tax should ever be assessed, levied, and collected for the purpose of paying said bonds and coupons, or any part thereof.

43 Your petitioner represents that there is but one desire on the part of the people of Knox County, and that is faithfully to observe and carry out to the letter the contract made and plighted faith given in the issuing of said bonds and coupons by causing to be annually assessed, levied, and collected a tax of one-twentieth of one per cent., and no more, from the assessed taxable property of said county, which money, when so collected, to be applied to the paying off and discharging such indebtedness.

Wherefore your petitioner represents that it is true, as stated in said order of the county court hereto attach', that the necessity exists for the assessments, levy, and collection of a tax of one-twentieth of one per cent. upon the taxable property of Knox County for the year 1879, for the purpose of paying said bond & coupons due & maturing.

Wherefore, as provided by an act of the general assembly of the State of Missouri, approved March 8th, 1879, entitled "An act concerning the assessment, levy, and collection of taxes, and the disbursement thereof," the undersigned, prosecuting attorn'y of Knox County, prays for an order commanding the County Court of Knox County to have assessed, levied, and collected a tax of one-twentieth of one per cent., to be applied in the payment of said bonds and coupons due & maturing, known as

44 "M. and M. bonds," which purpose and order is not in conflict with the constitution or any laws of the State of Missouri, and which said tax, when so assessed, levied, and collected, shall be used for no other purpose than as stated herein and in the order of said County Court of Knox County.

All of which is respectfully submitted. And your orator, as in duty bound, will ever pray.

June 2nd, A. D. 1879.

J. M. McCALL, *Pros. Attorney.*

STATE OF MISSOURI,
County of Knox:

In the Knox County circuit court, and State aforesaid, before the Hon. John C. Anderson, the following proceedings, on the 4th day of June, A. D. 1879, were had, to wit:

Now comes on the application of J. M. McCall, prosecuting attorney for Knox County, Missouri, and he presents his petition and application to the court, heretofore filed, praying an order of this court to make a levy of one-twentieth of one per cent. for the year 1879 for the purpose of paying the said special levy of tax for the payment of the Missouri and Mississippi Railroad bonds and interests on the said bonds and coupons.

This application having been seen and inspected by the court, and the court having he'rd the application, and being fully advised in the premises,

45 Therefore it is ordered by the court that the County Court of Knox County, Missouri, make a special levy of one-twentieth of one per cent. tax on all the taxable property of said Knox County, Missouri, for the year 1879 for the purpose of paying bonds and coupons issued to the Missouri and Mississippi Railroad Company, as prayed for by petition.

And it is further ordered by the court that a full and complete transcript of the record in this cause be made by the clerk of this court, and that he certify the same and transmit the same to the county court of said Knox County, Missouri.

STATE OF MISSOURI,
County of Knox, ss:

I, Henry Shultz, clerk of the circuit court within and for the county and State aforesaid, hereby certify the above and foregoing to be a true copy of the petition and copy of order of court in the within-entitled cause as the same appears on file and on record in my office.

Witness my hand and official seal. Done at office in Ednia, Mo., this September 1st, 1879.

[SEAL.]

HENRY SHULTZ,
Clerk of the Knox County Circuit Court.
By J. W. FOX, *Deputy.*

46 EXHIBIT C.—*Certified copy record.*

(On margin:) Exhibit C.

STATE OF MISSOURI,
County of Knox, ss:

Adjourned May term, 187 .

In the county court of said county, on the 6th day of June, 1879, the following othe' proceedings were had, viz:

Now at this day the court consider the order of the Knox County circuit court relating to the levy of a tax of $\frac{1}{20}$ of % to pay M. & M. R. R. debt, which said order is dated June 4th, 1879, and is in words and figures following to wit:

Now comes on the application of J. M. McCall, prosecuting attorney for Knox County, Mo., and he presents his petition and application to the court, heretofore filed, praying an order of this court to make a levy of $\frac{1}{2}\frac{1}{0}$ of % for the year 1879, for the purpose of paying the said special levy of tax for the payment of the Missouri and Mississippi Railroad bonds and interest on said bonds and coupons.

This application having been seen and inspected by the court, and the court having heard the application, and being fully advised in the premises, wherefore it is ordered by the court that the county court of Knox County, Mo., make a special levy of $\frac{1}{2}\frac{1}{0}$ of 1 % tax on all the taxable property of said Knox County, Mo., for the year 1879, for the purpose of paying bonds and coupons issued to the M. & M. R. R. Company, as prayed for by petition.

47 And it is further ordered by the court that a full and complete transcript of the record in this cause be made by the clerk of this court, and that he certify the same and transmit the same to the county court of said Knox County, Missouri.

Whereupon it is ordered by the court that a levy of 5 cts. on the $100 valuation, or $\frac{1}{2}\frac{1}{0}$ of 1 %, be levied upon the taxable property of Knox County for the purpose of paying the M. & M. R. R. debt of Knox Co., Mo., for the year 1879.

STATE OF MISSOURI,
County of Knox, ss:

I, Frank P. Hall, clerk of the county court in and for said county, hereby certify the above and foregoing to be a true copy of the proceedings of our said county court on the day and year above written, as the same appears of record in my offi'e.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at office, in Edina, Mo., this the 2nd day of Sept., 1879.

[SEAL.] FRANK P. HALL,
Clerk County Court.

48 EXHIBIT D.—*Certified copy of record.*

(On margin:) Exhibit D.

STATE OF MSSSOURI,
County of Knox, ss:

May term, 1879.

In the county court of said county, on the fifth day of May, 1879, the following among other proceedings were had, viz:

Now, at this day the court considers the matter of subscribing the revenues collected and *and* to be collected and monies received and to be received for county purposes in accordance with the provisions of an act entitled "An act for the better protection of the county revenue funds of the State," approved March 19th, 1879; and the court having considered said act, and being fully advised in the premises, it is therefore ordered by the court that all revenues and monies received and to be received in Knox County, Mo., for county purposes for the year 1879 are hereby set apart, appropriated,

apportioned, and subdivided in accordance with the terms and provisions of an act of the legislature of the State of Missouri entitled "An act for the better protection of the county revenue funds of the State," approved March 9th, 1879, and the following order, to wit; pauper funds, 5 cts. pr. $100.00; road and bridge fund, 20 cents—15 road, 5 bridge; fund for the payment of the salary of co. officess, 15 cts; fund for the payment of grand and petitt jurors, judges and clerks of elections, & witnessess for the grand jury, 5 cts.; contingent fund, 5c.

49 It is further ordered that the revenues and monies thus set apart shall not be drawn from the treasury except by warrant on the respective funds so set apart. It is further ordered that it shall be the duty of the county treasurer to forthwith seperate and divide the revenues of Knox County, Missouri in his hands, and as they come into his hands, in compliance with this order of court and the provisions of said act, and it shall be his duty to pay out the revenues thus subdivided on warrants issued by order of this court on the respective funds so set apart and subdivided, and not otherwise; and for this purpose the treasurer shall from this day forward keep a seperate account with each fund so set apart and designated, and in compliance with this order of court and the act recited as aforesaid.

STATE OF MISSOURI,
County of Knox, ss:

I, Frank P. Hall, clerk of the county court in and for said county, hereby certify the above and foregoing to be a true copy of the proceedings of our said Knox County court on the day and year above written, as the same appears of record in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at office in Edina, this 4th day of September, 1879.

[SEAL.] FRANK P. HALL,
Clerk County Court.

50 And thereupon, and on said 16th day of September, A. D. 1879, there was filed a demurrer to the return to the peremptory writ of mandamus, in words and figures following, to wit:

Demurrer to return to peremptory writ.

UNITED STATES EX REL. SAMUEL C. DAVIS }
vs.
COUNTY COURT OF KNOX COUNTY. }

Now comes relator and demurs to the return of the respondents, and asks that they be required to make further return to the writ of this court, for the reason—

1st. That the return fails to show a compliance with the requirements of the writ.

2d. The return fails to show any sufficient excuse for non-compliance with the orders of this court.

3rd. The return is wholly insufficient, and constitutes no valid
51 reason why the peremptory command of this court be complied with.

4th. The act of the general assembly of Missouri approved M'ch 19, 1879, & the action of the County Court of Knox County, under its provisions, constitute no protection to respondents in their refusal to comply with the peremptory orders of this court that they cause to be issued and delivered to relator a warrant on the general fund of the county for the amount of his judgment, interest, and costs.

HENDERSON & SHIELDS,
For Relator.

52 And afterwards, to wit, on the 18th day of September, A. D. 1879, the following further proceedings were had and appear of record in said cause, to wit:

Demurrer sustained.

UNITED STATES EX REL. SAMUEL C. DAVIS, relator,
vs.
COUNTY COURT OF KNOX COUNTY, AND THE Judge' thereof, respondents. } 1188.

Now come the parties, by their attorneys, and the court having examined the questions of law arising upon the demurrer of relator to the return of respondents to the peremptory writ of mandamus, finds the law thereon for the relator; it is therefore ordered that said demurrer be and the same is hereby sustained; and on motion of their attorney leave is granted said respondents to file additional return to said writ on or before October 16th.

53 And afterwards, to wit, on the 10th day of December, A. D. 1879, the following further proceedings were had of record in said cause, to wit:

Order to show cause.

UNITED STATES EX REL. SAMUEL C. DAVIS, relator,
vs.
COUNTY COURT OF KNOX COUNTY, AND THE Judges thereof, respondents.

Now comes the relator, by his attorney, on whose motion it is ordered that said respondents show cause before this court, on or before the sixth day of January next, why they should not be attached for contempt for failing to obey the peremptory writ of mandamus heretofore issued herein against them; and it is further ordered that a certified copy of this order be served upon each of said respondents.

54 And afterwards, to wit, on the 31st day of December, A. D. 1879, there was filed in said cause an amended return to the peremptory writ of mandamus and answer to rule to show cause in words and figures following, to wit:

Amended return to peremptory writ.

In the circuit court of the United States for the eastern district of Missouri, September term, A. D. 1879.

THE UNITED STATES EX REL. SAMUEL C. Davis, relator,
vs.
THE COUNTY COURT OF KNOX COUNTY, AND the Judges thereof, respondents.

Now, at this day come the respondents, and for return to the rule made by this court on the 10th day of December, 1879, that the respondents as judges of the county court of Knox County, Missouri, should show cause, on or before the 6th day of January, 1880, why they should not be attached for contempt in not making an amended return to the peremptory writ of mandamus issued in the above-entitled cause on the 1st day of May,
55 1879, and returnable on the 15th day of September, 1879, as these respondents were required to do by the order of this honorable court made on the 18th day of September, 1879, and state and give this honorable court to be informed that in addition to the facts stated in their return to said peremptory writ filed in said cause on the 16th of September, 1879, for greater certainty reference thereto is hereby made, that a judgment was rendered against Knox County in favor of the relator upon sundry bond' and past due coupons for interest detached from said bonds issued by said county to the Missouri and Mississippi Railroad Company under and by authority of an act of the general assembly of the State of Missouri entitled "An act to incorporate the Missouri and Mississippi Railroad Company," approved February 20th, 1865.

That the Missouri and Mississippi Railroad Company was organized under and by authority of said act. That the 13th section of said act is as follows:

"Sec. 13. It shall be lawful for the corporate authorities of any city or town, or county court of any county desiring so to do, to subscribe to the capital stock of said company, and may issue bonds therefor, and levy a tax to pay the same, not to exceed one-twentieth of one per cent. upon the assessed value of the taxable property for each year."

That in and by the authority conferred upon the county court of Knox County in said section, and no other power or authority, said county
56 court, on the day of 187 , subscribed the sum of to the capital stock of said Missouri and Mississippi Railroad Company, and issued bonds to it for said sum in payment of said subscription. That said subscription was made without the assent of two-thirds of the qualified voters of Knox County, no election, regular or special, having been held in said county for the purpose of obtaining such assent, but, on the contrary, such subscription was made by said county court against the wishes of a two-thirds majority of the qualified voters of said county.

That ever since the essuing of said bonds in payment of said subscription as aforesaid, said County Court of Knox County, under and by authority of said act, has levied every year, including the present year, a special tax of one-twentieth of one per cent. upon the assessed value of

all the taxable property in said county, and authorized said special tax to be extended upon the tax books of said county for each year, and had said special tax collected for the purpose of paying said bonds and interest coupons, so far as the same would do so.

That the aggregate valuation of the taxable property in Knox County for the year 1877 was $3,082,801.00; for the year 1878, was $3,157,739.00; for the year 1879, is $2,943,230.

57 That the eleventh section of the tenth article of the constitution of the State of Missouri limits the power of county courts in levying taxes for county purposes as follows:

"For county purposes the annual rate on property in counties having six million dollars or less, shall not in the aggregate exceed fifty cents on the one hundred dollars valuation."

That the following was the law in force when said bonds and coupons were issued to said Missouri and Mississippi Railroad Company, as will be seen by reference to section 165 of chapter 118 of Wagne's Missouri Statutes, viz:

"The several county courts are empowered to levy such sums as may be annual'y necessary to defray the expenses of their respective counties, by a tax upon all property and licenses made taxable by law for State purposes, * * * but the county tax in no case shall exceed one-half of one per cent. on the taxable property."

That under and by authority of the constitution and statute as herein stated, these respondents, in their capacity as judges of Knox court, on the 9th day of May, 1879, levied a tax of one-half of one per cent. upon all property and licenses in Knox County made taxable by law for State purposes, and also on the 6th day of June, 1879, levied a tax of one-twentieth of one per cent. upon all said property & licenses,

58 and authorized said taxes to be extended upon the tax books of said county, and had said tax book made out and duly delivered to the collector of said county on the 1st day of August, 1879, and said taxes are now in the process of collection.

That these respondents have no authority to levy any other or greater tax than said special tax of one-twentieth of one per cent. and said tax of one-half of one per cent. upon the valuation of all property and licenses made taxable by law as aforesaid; that such levy of one-half of one per cent. constitutes the general or common revenue fund of said county, upon which relator seeks to have a warrant drawn to pay his judgment against said county; that, by the laws of the State of Missouri, the respondents, as Justices of the Knox County Court, are only authorized by the statutes of said State to order warrant to be drawn on the general or common revenue fund of said county by the clerk of the county court of Knox County, on the treasurer thereof, as follows:

First. A sum sufficient for the payment of all necessary expenses that may be incur'ed for the care of paupers and insane persons of such county.

Second. A sum sufficient for the payment of all necessary expenses for the building of bridges and the repairing of roads, including the pay of road overseers of such county.

59 Third. A sum sufficient for the payment of the salaries of all county officers, when the same is by law made payable out of the ordinary revenues of the county.

Fourth. A sum sufficient for the payment of the fees of grand and petit jurors, judges and clerks of elections, and *and* fees of witnesses for the grand jury of the county.

Fifth. A sum sufficient for the payment of the other ordinary current expenses of the county, not hereinbefore specially provided for, which shall be known and designated as the contingent fund of such county, which last sum shall in no case exceed one-fifth of the total revenue of such county for county purposes, for any one year.

These respondents state that they as judges of Knox county Court, are authorized and empowered, under the laws of the State of Missouri, to audit, adjust, and settle all una'justed and unsettled accounts against Knox County, and to which said county is a party, and to order the payment of any sum of money which may be found by them in either capacity as judges of Knox County court to be due by said county, and to order the payment of such sum out of the county treasurer, and to order their clerk to draw and issue a warrant therefor.

But the statutes of the State which were in force at the time
60 that said bonds and coupons were issued to said Missouri and Mississippi Railroad Company as aforesaid, and which are still in force expressly requires, and still so require, that each and every warrant which they were and are authorized to order to be drawn by their clerk, must express upon the face the particular fund out of which it must be paid by the treasurer of the county; and said treasurer is expressly prohibited by said statutes from paying such warrant out of any fund in the treasury other than the fund mentioned in such warrant, and it is expressly made a criminal offence for the county courts of any county, or any member thereof, to knowingly vote for the appropriation, disposition, or disbursement of any money belonging to any county other than the specific purpose for which the same was assessed, levied, appropriated, and collected.

That if these respondents, in their capacity as judges of Knox County court, should draw a warrant in favor of the relator in the form that the relator claims it should be drawn, without expressing the debt for which it is drawn, and the particular fund out of which such warrant should be paid, a warrant in such form would not comply with the requirements of the statutes in such cases made and provided, and it would, or at
61 least it might, mislead the treasurer of said county, and thereby compel or at least authorize him to pay such warrant out of the general or ordinary revenues of said county, to the exclusion of the subjects and objects hereinbefore mentioned, and thus take money out of the treasury of Knox County which had been assessed, levied, and collected for the express purpose of defraying the necessary expenses of administering the county government of said county, and which is legally and properly only applicable to the defraying of said expenses.

That the money arising from the collection of said tax of one-half of one per cent., providently and economically administered and applied, is barely sufficient to defray each year the necessary expenses of administering the county government of said county, so that if a warrant should be drawn in the form required and demanded by said relator, and such warrant paid, there would be no money left in the treasury of said county with which to defray the ordinary expenses thereof. The result of such action would

be that it wood operate a suspension and perhaps a disorganization of the county government of Knox County.

These respondents are advised by counsel, and they verily believe, that the relator is only entitled to the money arising from said special tax of one-twentieth of one per cent., or at least to his pro rata thereof.

62 But having no wish or desire to do anything in the premises except their duty under the constitution and statutes of the State of Missouri, and desiring to comply with the mandate of this honorable court as contained in said peremptory writ of mandamus on the 5th day of November, 1879, they, in their capacity as judges of the Knox County court, made and order and had the same entered on the records of their court, requiring their clerk to draw, sign, and issue to the relator, or to Henderson and Shields, the attorneys for the relator, a warrant for the full amount of said judgment, interest, and costs.

Said warrant was signed by Casper Fetters, sen., as the president of the Knox County court whilst said court was in session, attested by the clerk of said court and numbered, and said warrant (which is hereto attached marked "Exhibit A," and asked to be taken as a part of this return) delivered to Henderson and Shields, as attorneys for the relator, immediately thereafter, and they declined to accept the same on the ground that, as it is worded, it does not comply with said peremptory writ of mandamus.

Said warrant is drawn in favor of the relator for the full amount of his said judgment, interest and costs, payable out of the general funds of said county, that are now or may hereafter be, in the treasury thereof, not otherwise appropriated, and which are applicable to the payment thereof.

63 Now these respondents are of the opinion, and they so insist, that said warrant, as drawn, is a full and complete compliance with the mandate of said peremptory writ of mandamus, in so far as it commands them, as judges of Knox County court, to make out and deliver, or to cause to be made out and delivered, to said relator or his said attorneys (Henderson & Shields) a warrant on the county treasurer of Knox County, Missouri, payable out of the general funds of said county in the county treasury thereof, or which may hereafter be in the treasury thereof, for the full amount of said judgment, interest and costs, and they return said warrant as a full and complete performance of and compliance with the mandate in said court.

Respondents say that said warrant was drawn at the very first term and session of the court which was held, or which legally could have been held after the decision of this honorable court on the 18th day of September, 1879, holding their return to said writ of mandamus is insufficient, and requiring them to file an amended return thereto.

That it was the full intention of these respondents to have made an amended return during this present term of this honorable court, to said peremptory writ of mandamus, and set up the drawing, issuing, and delivery of said warrant as hereinbefore stated, as a full and complete

64 compliance with the mandate of said writ, and the order of this honorable court; and they would have made said amended return during this present term of this honorable court if the rule to show cause as aforesaid had never been made.

Wherefore these respondents say that the relator is not entitled to a warrant in any other or different form for his judgment, interest, and costs

than the warrant hereto attached, which has been tendered to his said attorneys, and which is hereby tendered to him.

And they pray the court to make such order in the premises that the county government of Knox County may be fully protected against the drawing of a warrant in the favor of the relator in the form claimed and demanded by him, and the rule made by this honorable court for the respondents to show cause why they should not be attached for not drawing a warrant in favor of the relator in the form as claimed and demanded by him be discharged, and that they be dismissed with their proper costs.

CASPER FETTERS, SEN.
ANTONY HUNALT.
JOHN CALLAWAY.

CARY & REYNOLDS, *Of Counsel.*

65 STATE OF MISSOURI,
County of Knox, ss:

Personally appeared before me the undersigned, clerk of the county court of county aforesaid, Casper Fetters, Antone Hunalt, and John Callaway, judges of the county court of Knox County, Missouri, who, being duly sworn, on their oath say that the matter set forth in the foregoing return are true to the best of their knowledge and belief.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, this 30th day of December, A. D. 1879.

[SEAL.] FRANK P. HALL,
Clerk County Court.

65½ EXHIBIT A.

No. 1487.] [$18,609.77

STATE OF MISSOURI,
County of Knox, ss:

NOV. *5th*, 1879.

County Warrant.

The treasurer of the county of Knox will pay to Samuel C. Davis the sum of eighteen thousand six hundred and nine & $\frac{77}{100}$ dollars out of the general fund of said county, that are now, or may hereafter be in the treasury thereof, not otherwise appropriated, and which are applicable to the payment of said judgment; this warrant being issued by the county court in obedience to a peremptory mandamus issued by the circuit court of the United States for the eastern district of Missouri, at the relation of Samuel C. Davis, bearing date the 1st day of May, 1879, on a judgment recovered on the 22nd day of May, 1878, by said Sam'l C. Davis, against said county on sundry bonds of said county issued to the Missouri and Mississippi Railroad Company in payment of a subscription of said county to the capital stock of said railroad, under the 13th section of an act of the general assembly of the State of Missouri, entitled "An act to incorporate

the Missouri and Mississippi Railroad Company, approved Feb'y 20th, 1865."

Given at the court-house in Edina, the 5th day of Nov. 1879.

By order of the county court.

CASPER, FETTERS, SEN.,
President Court.

Attest:
FRANK P. HALL, *Clerk.*

66 And afterwards, to wit, on the 6th day of January, A. D. 1880, there was filed in said cause a demurrer to part of said amended return, in words and figures following, to wit:

Demurrer to part of return.

U. S. EX REL. SAMUEL C. DAVIS)
vs.)
KNOX COUNTY COURT.)

Now, at this day comes relator herein & demurs to the amended return herein by respondents to the peremptory writ of mandamus and to that *that* of said return beginning with the words: "These respondents are advised by counsel, & they verily believe," but ending with the words "and that they be dismissed with their proper costs" for the reasons:

1st. That the return fails to show compliance with the requirements of the writ.

2nd. The return fails to show any sufficient excuse for non-compliance with the orders of this court.

3rd. The return is wholly insufficient & constitutes no valid
67 reason why the peremptory command of this court be not complied with.

4th. That the warrant issued is not in compliance with the command of this writ.

5th. That the pretended warrant issued is exactly contrary to what the writ commands.

6th. That the pretended warrant issued is contrafictory in its terms invalid.

7th. That no excuse for non-compliance nor compliance with the command of the writ is shown.

HENDERSON & SHIELDS,
For Relator.

68 And also on said 6th day of January, A. D. 1880, there was filed in said cause a motion to strike out part of said amended return in words and figures following, to wit:

Motion to strike out part of amended return.

U. S. circuit court, E. dist. of Mo. Jan'ry 6, 1880.

UNITED STATES EX REL. SAMUEL C. DAVIS
vs.
THE COUNTY COURT OF KNOX COUNTY & THE Judges thereof.

Now, at this day comes the relator herein and moves the court to strike out all of the respondents' return to the rule to show cause why they should not be attached for contemp' for not making an amended return to the peremptory writ of mandamus, and also all that part of the amended return to said peremptory writ of mandamus made by said respondents, filed Dec. 31st, 1879, beginning with the words "that a judgment was
69 rendered against Knox County in favor of the relator" and ending with the words "the result of such action would be that it would operate a suspension & perhaps a disorganization of the cou'ty government of Knox County," for the reasons—

1st. That all of said averments are irrelevant, immotional, & frivol'us.

2nd. That the said averments present no excuse for not complying with the command of the peremptory writ of mandamus.

3rd. That said facts have all been adjudicated by this court when it issued its peremptory writ herein.

4th. That the only return that can be made to the peremptory writ is obedience, while the facts stated are simply pretended excuses for non-compliance by respondents to the command of the writ.

HENDERSON & SHIELDS,
For Relator.

70 And afterwards, to wit, on the 9th day of March, A. D. 1880, at a regular stated term of said circuit court of the United States, the following proceedings were had and appear of record in said cause, to wit:

Demurrer sustained.

U. S. EX REL. SAMUEL C. DAVIS
vs.
THE COUNTY COURT OF KNOX COUNTY, Missouri, and the Judges thereof.

Now, at this day come the parties herein, by their respective counsel, and the relator withdraws his motion to strike out part of the return of respondents, and also his demurrer to part thereof, and by lease of court files a demurrer to the whole return to the peremptory writ of mandamus, and the rule to show cause why the respondents should not be attached for contempt, for disobedience to said peremptory writ of mandamus; which said demurrer, being fully argued by counsel and considered by the court, is by the court sustained, and said return ad-
71 judged insufficient, as not showing compliance with the peremptory writ of mandamus herein nor any reason' excuse why the respond-

ents should not issue the warrant to the relator or his attorneys of record as commanded in said peremptory writ:

It is therefore ordered and adjudged by the court that the respondents, the justices of the County Court of Knox County, Missouri, do make out and deliver or cause to be made out and delivered, to the relator or to Henderson & Shields, his attorneys of record, a warrant on the county treasurer of Knox County, Missouri, payable out of the general funds of said county of Knox in the county treasury of said county, for the amount of said judgment, interest, and costs, on or before the tenth day of April, 1880, an' in default thereof they be immediately attached and stand committed for contempt for refusing to obey the orders and writs of this courts.

And it is further ordered and adjudged that the relator herein have and recover his costs of this proceeding against said respondents, and that he have thereof execution.

And it is further ordered that a copy of this order be served immediately upon each of the respondents by the marshall of the district.

72 And thereupon the said respondents, by James Carr, esquire, their attorney, in open court, waive service of said order and enter appearance to same.

Writ of error allowed.

And the said respondents, by their said attorneys, present to the court a writ of error to remove this cause to the Supreme Court of the United States, and a citation citing and admonishing the said relator to be and appear at a Supreme Court of the United States at the next term thereof, on the second Monday of October next, which said writ of error is allowed, and said citation signed by the judge.

And the said respondents also present to the court their bond in the penal sum of five hundred dollars, which said bond is approved and ordered to be filed.

The said demurrer so substituted in the foregoing order on the withdrawal of the original demurrer is in words and figures following, to wit:

73 *Substituted demurrer.*

In the U. S. circuit court for the eastern district of Mo., March term, 1880.

THE UNITED STATES EX REL SAMUEL C. DAVIS
vs.
THE COUNTY COURT OF KNOX COUNTY ET ALS. } No. 1188.

Now, at this day comes the relator herein, and demurs to the amended return to the peremptory writ of mandamus herein issued, and to the rule to show cause why an attachment should not issue, heretofore made on the tenth (10th) day of September, 1879, for the following reasons:

1st. That the said returns to the said rule, to show cause, etc., presents no valid or legal excuse for non-compliance with the demand of the peremptory writ of mandamus.

74 2d. That all of the facts set forth in said amended return were adjudicated by this court when the peremptory writ herein was ordered to be issued.

3d. That the only return which can be made to the peremptory writ of mandamus is obedience thereto, while the facts stated in said return are simply frevolous excuses for noncompliance with the demand of the writ.

4th. That said return does not state facts sufficient to constitute a valid excuse for noncompliance with the command of said writ, nor does it state facts sufficient to show cause why they should not be attached for contempt, nor why the rule in that behalf should not be made absolute.

5th. That the return fails to show a compliance with the requirements of the peremptory writ, and fails to show any sufficient excuse for noncompliance therewith.

6. That the issuance of the warrant set out in said return is not a compliance with the command of the peremptory writ, but on the contrary said pretended warrant is in its terms exactly contrary to what the writ commands.

75 7th. That the said pretended warrant so issued is contradictory in its terms and invalid.

8th. That said return is wholly insufficient either to said peremptory writ or to said rule to show cause, &c., and set forth irrelevant, immaterial, and frivolous matters, and matters which have been heretofore adjudicated in this case.

Wherefore relator asks judgment that said return be for naught held, and that said respondents make further return to said peremptory writ or stand committed for contempt for failure to so do.

HENDERSON & SHIELDS,
For Relator.

The said bond is in words and figures following, to wit:

76 Know all men by these presents, that we, Casper Fetters, sr., John Calloway, Anthony Hunalt, L. F. Colty, John Gibler, and Ed. M. Randolph are held and firmly bound unto Samuel C. Davis in the full and just sum of five , to be paid to the said Samuel C. Davis, his heirs, executors, administrators, or assigns; to which payment well and truly to be made we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents. Sealed with our seals, and dated this day of March, in the year of our Lord one thousand eight hundred and eighty.

Whereas lately at the September term A. D. 1879, of the circuit court of the United States for the eastern district of Missouri, in a suit depending in said court between the United States ex rel. Samuel C. Davis, plaintiff, and the County Court of Knox County, Missouri, and the Judges thereof, to wit, Casper Fetters, sr., John Calloway, Anthony Hunalt, defendants, judgment was rendered against the said defendants, that they draw or order to be drawn and delivered to said Samuel C. Davis a warrant on the county treasurer of Knox County, Missouri, for the amount of judgment, interest, and costs against Knox County, Missouri, payable out of the general funds of said county, and the said the County Court of Knox County, Missouri, and the Judges thereof, to wit, Casper Fetters, John Calloway, and Anthony Hunalt having obtained a writ of error of

the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Samuel C. Davis citing and admonishing him to be and appear at a Supreme Court of the United States, to be holden at Washington the second Monday of October next:

Now, the condition of the above obligation is such that if the said County Court of Knox County, Missouri, and the Judges thereof shall prosecute said writ of error to effect, and answer all damages and costs if said Knox County Court, of Missouri, and the judges thereof fail to make good its and their plea, then the above obligation to be void; else to remain in full force and virtue.

Sealed and delivered in presence of—

CASPER FETTERS, SR. [SEAL.]
JOHN CALLOWAY. [SEAL.]
ANTHONY HUNALT. [SEAL.]
L. F. COLTEY. [SEAL.]
JOHN GIBLER. [SEAL.]
ED. M. RANDOLPH. [SEAL.]

Approved by

SAMUEL TREAT, *Judge.*

76½ OFFICE OF THE CLERK OF THE COUNTY COURT, KNOX COUNTY, MO.,
Edina, Mo., March 5th, 1880.

I hereby certify that the foregoing and within bond is good and sufficient for the amount therein named.

FRANK P. HALL,
Clerk County Court.

(Indorsed:) No. 1188. United States circuit court, eastern district of Missouri. U. S. ex rel. Samuel C. Davis vs. County Court of Knox County. Bond. $, principal. , sureties. Filed 9th day of March, 1880. , clerk.

77 UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

I, M. M. Price, clerk of the circuit court of the United States in and for the eastern district of Missouri, do hereby certify that the writing hereto attached to be a transcript of the pleadings and proceedings in case No. 1188 of United States ex rel. Samuel C. Davis, relator, against the County Court of Knox County and the Judges thereof, respondents, as fully as the same remain on file and of record in said case in my office.

In witness whereof I hereunto subscribe my name and affix the seal of said court, at office in the city of St. Louis, in said district, this 20th day of September, in the year of our Lord eighteen hundred and eighty.

[SEAL.] M. M. PRICE,
Clerk of said Court.
By A. P. SELBY, *Deputy.*

(Indorsed:) No. . United States circuit court, eastern district of Missouri. against . Duly certified copy of the , in the above-entitled cause.

(Indorsement on cover.) No. 80. The County Court of Knox County, Miss- i, and the Judges thereof, plaintiff in error, vs. the United States ex Samuel C. Davis. E. Missouri. C. C. U. S. Filed 9th October, 1880.

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109-229

OFFICE SUPREME COURT U. S.
FILED
OCT 25 1883
JAMES H. McKENNEY, Clerk.

THE COUNTY COURT OF KNOX COUNTY, MISSOURI, AND THE JUDGES THEREOF,
PLAINTIFFS IN ERROR,

vs.

THE UNITED STATES, *ex rel.*, SAMUEL C. DAVIS,
DEFENDANTS IN ERROR.

SUPREME COURT OF THE UNITED STATES, } ss.

OCTOBER TERM, 1883.

No. 80.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

STATEMENT AND BRIEF.

GEORGE H. SHIELDS,
For Relator.

109-119

OFFICE SUPREME COURT U.S.
FILED
OCT 25 1883

THE COUNTY COURT OF KNOX COUNTY, MISSOURI, AND THE JUDGES THEREOF,
PLAINTIFFS IN ERROR,

vs.

THE UNITED STATES, *ex rel.*, SAMUEL C. DAVIS,
DEFENDANTS IN ERROR.

SUPREME COURT OF THE UNITED STATES, } ss.

OCTOBER TERM, 1883.

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IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

STATEMENT AND BRIEF.

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THE COUNTY COURT OF KNOX COUNTY, MISSOURI, AND THE JUDGES THEREOF,
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vs.

THE UNITED STATES, *ex rel.*, SAMUEL C. DAVIS,
DEFENDANTS IN ERROR.

SUPREME COURT OF THE UNITED STATES, } ss.

OCTOBER TERM, 1883.

No. 80.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

STATEMENT OF THE CASE.

On the 22d day of May, 1878, at the March term of the United States Circuit Court for the Eastern District of Missouri, Samuel C. Davis obtained judgment against the County of Knox, in the State of Missouri, for $16,975.35 on past due bonds and coupons, issued by the County of Knox on the first day of February, 1868, and thereafter, whereby the County Court of Knox county acknowledged its indebtedness, and promised to pay to the Missouri and Mississippi Railroad Company or bearer, the amount mentioned in said bonds and coupons, in payment for stock subscribed to said railroad company by said County of Knox, under the authority of the laws of Missouri, and an act entitled, "An Act to incorporate the Missouri and Mississippi Railroad Company." Approved February 20th, 1865.

After obtaining said judgment, on the 10th day of August, 1878, relator exhibited to the County Court of Knox county a certified copy of his judgment and cost bill,

and demanded the payment thereof, which was refused. Relator also demanded of said County Court of Knox county to issue and deliver, or cause to be issued and delivered him a warrant on the county treasurer of Knox county for the amount of said judgment, interest and costs to be paid out of the general funds of said county on presentation, and demanded that if there be not sufficient money in said treasury to pay said judgment, interest and costs, that the county cause to be levied and collected, as required by law, an amount sufficient to pay the same. All of which the County Court declined to do.

On the 23rd day of September, 1878, at the September term of the United States Circuit Court, the relator filed a petition, stating the facts as aforesaid, and averring that the county had no property subject to execution from which he could make said judgment, and that it was the duty of the County Court to issue a warrant to relator on the County Treasurer for the amount of said judgment, interest and costs, requiring the treasurer to pay said judgment out of the funds in his hands, and averring a refusal on the part of the county court, and asking for a peremptory mandamus requiring them to issue such warrant, and to immediately levy and cause to be collected a tax on all the property in said county subject to taxation for such purpose, according to law, sufficient to pay said warrant and said judgment. The Court having considered said petition, declined to issue the peremptory writ of mandamus, but issued an alternative writ of mandamus, returnable to the March term, 1879, of said Court, commanding said County Court of Knox county to deliver to said relator a warrant on the County Treasurer of said county, payable out of the general funds of said county for said judgment, and to forthwith levy and assess, or cause to be levied and assessed a sufficient tax to pay off said judgment, interest and costs, or show cause why they should not so do. On the return day of said writ, the justices of said County Court made return as follows: first, that the bonds issued to the Missouri and Mississippi Railroad Company on which said judgment was based, were null and void. That their issue was not authorized by two-thirds of the qualified voters as required by the statutes of the State of Missouri, and that the County Court of Knox county was prohibited from levying a tax in any year of more than one-twentieth of one per cent. upon the taxable

property of said county for the purpose of paying said bonds, and averred a willingness to make such annual levy of one-twentieth of one per cent. for the purpose of applying the proceeds thereof *pro rata* to relator's judgment, and other judgments and bonds of the same issue.

On the 31st day of March, 1879, relator demurred to this return, and on the 19th day of April, 1879, the Court sustained said demurrer. The respondents declined to plead further, and judgment was rendered for relator, and a peremptory writ of mandamus issued, directed to the County Court of Knox county, and the justices thereof, "commanding them forthwith to make out and deliver or cause to be made out and delivered to the said relator, or to Henderson & Shields, his attorneys of record, a warrant on the County Treasurer of Knox county, Missouri, payable out of the general funds of said Knox county in the county treasury of said county for the amount of judgment, interest and costs herein and further commanding said County Court and the justices thereof, that if there be not sufficient funds in the treasury of said Knox county to pay said warrant, that said County Court and the justices thereof do forthwith levy and cause to be collected a special tax of one-twentieth of one per cent. (in addition to the general tax for county purposes provided by law), on the property subject to taxation in said county according to law, to raise such sums as may be required in addition to said general revenue of said county to pay such warrants. And that they certify complete obedience to this writ, on the first day of the next September term of this Court.

On the return day of said writ, the County Court instead of returning obedience to the peremptory writ, returned that on the 9th day of May, 1879, they made an order and caused the same to be spread on the records of said Court of Knox county, directing the Prosecuting Attorney of Knox county to present a petition to the Circuit Court of said county, praying for an order for the levy of a tax of one-twentieth of one per cent. upon the taxable property of Knox county That on the 3rd day of June, 1879, the said Prosecuting Attorney presented his petition to the State Circuit Court of said county, which Circuit Court made an order that the County Court make a special levy of one-twentieth of one per cent. on all the taxable property of said county for the year 1879, for the purpose of paying

bonds and coupons issued to the Missouri & Mississippi Railroad Company as prayed for by petition. That afterwards on the 6th day of June, 1879, the County Court of said county in compliance with the order of the State Circuit Court, caused such tax of one-twentieth of one per cent. to be levied and when collected to be applied to the discharge of said judgment.

They further returned that it was impossible for them to certify complete and perfect obedience to said peremptory writ of mandamus by delivering to relator a warrant of the County Treasurer of Knox county, Missouri, payable out of the general funds of said county, for the reason that on the first day of the term of said County Court and prior to the service of said writ, the said County Court made an order and caused the same to be spread on the records of said County Court, separating, appropriating and subdividing the revenues of said county in accordance with the terms and provisions of an Act of the Legislature of the State of Missouri, entitled "An Act for the better protection of the county revenue funds of the State." Approved March 19th, 1879. That under the provisions of said Act, the funds in Knox county since prior to the service of the writ of mandamus, are, and have been, "pauper fund," "road and bridge fund," "fund for the payment of the salary of county officers," "fund for the payment of grand and petit jurors, judges and clerks of elections, and witnesses for the "grand jury," and "contingent fund."

That in addition to these several funds for specific purposes, there is a fund arising out of the special levy of one-twentieth of one per cent. to pay Missouri & Mississippi indebtedness. That the County Court of Knox county, Missouri, was estopped from rendering obedience to the said writ for the reason that there was no general fund in said county; that they have made the levy as commanded by said writ, and that they are ready to issue a warrant to relator on the County Treasurer of Knox county, Missouri, payable out of the levy of one-twentieth of one per cent. on all the property subject to taxation.

To this return relator demurred, and on the 18th day of September, 1879, demurrer was sustained, and leave granted respondents to file an additional return to said writ on or before October 16th, 1879. Said County Court neglected to file such additional return. On the 10th day of December, 1879, on relator's motion the said County Court was

ordered to show cause why they should not be attached for contempt of court for failing to obey the peremptory mandamus, and on the 31st day of December the said County Court appeared and filed an amended return to the peremptory writ of mandamus and answer to the rule to show cause.

This return set up, first, that in addition to the return already made, that the judgment rendered against Knox county, was rendered on bonds and past due coupons issued to the Missouri & Mississippi Railroad Company, under the authority of an Act, entitled "An Act to incorporate the Missouri & Mississippi Railroad Company." Approved February 20th, 1865. That the subscription was made without a vote of the people of Knox county thereon. That ever since issuing the bonds the County Court has levied and collected a special tax of one-twentieth of one per cent. That the aggregate valuation of the taxable property for the year 1877 was $3,082,801; for 1878 (3,157,739; for 1879 $2,943,230. That the eleventh section of the tenth article of the Constitution of the State of Missouri limited the power of the County Court in levying taxes for county purposes to fifty cents on the one hundred dollars valuation. And that the Statutes of Missouri in force at the time of the issuing of said bonds limited the county tax to one-half of one per cent. on taxable property. That under the authority of the Constitution and statutes the County Court on the 9th day of May, 1879, levied a tax of one-half of one per cent. and on the 9th day of June, 1879, levied a tax of one-twentieth of one per cent., and delivered the tax-book to the collector, and authorized the same to be collected. That the County Court has no authority to levy any greater tax than said special tax of one-twentieth of one per cent., and said tax of one-half of one per cent. "*That such levy of one-half of one per cent. constitutes the general or common revenue fund of said county*," upon which relator seeks to have a warrant drawn to pay his judgment against said county. That by the laws of the State of Missouri the respondents as justices of said County Court are only authorized to order a warrant to be drawn on the general or common revenue fund of said county on the Treasurer thereof, as follows:

First. A sum sufficient to care for paupers and insane persons.

Second. A sum sufficient for building bridges and repairing roads.

Third. A sum sufficient for the payment of the salaries of county officers.

Fourth. A sum sufficient for the payment of the fees of grand and petit jurors, witnesses, and judges and clerks of election.

Fifth. A sum sufficient for the payment of the other ordinary current expenses of the county, not hereinbefore specially provided for, to be known as a contingent fund, which in no case should exceed one-fifth of the total revenue of such county for county purposes for any one year.

That the said County Court are authorized to settle all unadjusted and unsettled accounts against said county, and to order the payment thereof out of the county treasury, and to order their clerk to draw warrants therefor.

That the statutes that were in force at the time of the issue of said bonds, and are still in force, require that each warrant must express upon the face the particular fund out of which it must be paid by the treasurer of the county That the treasurer is prohibited from paying such warrant out of any fund in the treasury other than the fund mentioned in the warrant, and that it was made a criminal offense for the county courts of any county to appropriate money of the county to any other than the specific purpose for which the same was assessed, levied, appropriated and collected.

That if the County Court should draw a warrant in favor of relator without expressing the debt for which it is drawn, and the particular fund out of which it is payable, it would not conform to the statutes, and might thereby mislead the treasurer of said county, "*and thereby compel, or at least authorize him to pay such warrant out of the general or ordinary revenues of said county*, to the exclusion of the subjects and objects hereinbefore mentioned, and thus take money out of the treasury of Knox county, which had been assessed, levied and collected for the express purpose of defraying the necessary expenses of administering the county government of said county, and which is legally and properly only applicable to the defraying of said expenses."

That the tax of one-half of one per cent economically ad-

ministered is barely sufficient to defray the necessary expenses of administering the county government of said county, so that if a warrant should be drawn in the form required, and such warrant paid, there would be no money left in the treasury with which to defray the ordinary expenses thereof. The result of such action would be that it would operate a suspension, and perhaps a disorganization of the county government of Knox county.

That relator is only entitled to his *pro rata* share of one-twentieth of one per cent.; but having no wish to do anything but their duty, and desiring to comply with the mandate of said Circuit Court, they had ordered their clerk to issue to relator a warrant for the full amount of said judgment, interest and costs, a copy of which warrant is made a part of said return, and is in the following words and figures:

"The Treasurer of the County of Knox will pay to Samuel C. Davis the sum of eighteen thousand six hundred and 77-100 dollars *out of the general fund of said county, that are now, or may be hereafter in the treasury thereof, not otherwise appropriated, and which are applicable to the payment of said judgment;* this warrant being issued by the County Court in obedience to a peremptory mandamus issued by the Circuit Court of the United States for the Eastern District of Missouri, at the relation of Samuel C. Davis, bearing date the first day of May, 1879, as a judgment recovered on the 22d day of May, 1878, by said Sam'l C. Davis, against said county on sundry bonds of said county issued to the Missouri & Mississippi Railroad Company, in payment of a subscription of said county to the capital stock of said railroad, under the 13th section of an Act of the General Assembly of the State of Missouri, entitled, "An Act to incorporate the Missouri & Mississippi Railroad Company. Approved Feb'y 20th, 1865."

Given at the court-house in Edina, the 5th day of Nov. 1879.

By order of the County Court.

CASPER FETTERS, SEN.,
President County Court."

ATTEST: FRANK P. HALL, *Clerk.*

That Henderson & Shields, relator's attorneys, declined to accept said warrant on the account that as it is worded, it does not comply with said writ of mandamus; that respondents insist that said warrant is a full and complete compliance with the peremptory writ of mandamus in so far as it commands said County Court to issue a warrant on the County Treasurer of Knox county.

That said warrant was drawn at the first term of the Court held after their original return to the writ of mandamus, was held wholly insufficient, &c., &c.

Respondents further insisted that relator was not entitled to a warrant in any other form than the one tendered, and asked the Court to make such order in the premises, that the County Court of Knox county might be fully protected against the drawing of a warrant in favor of the relator in the form claimed and demanded by him.

Relator filed a general demurrer to part of such return, and a motion to strike out a part thereof, which were after wards withdrawn on suggestion of the Court, and relator filed a general demurrer to said return, which, upon argument, was sustained by the Court, and said return adjudged insufficient, as not showing compliance to the writ, or any excuse for non-compliance; the Court making the following order:

> "It is therefore ordered and adjudged by the Court that the respondents, the justices of the County Court of Knox county, Missouri, do make and deliver, or cause to be made out and delivered to the relator, or to Henderson & Shields, his attorneys of record, a warrant on the County Treasurer of Knox county, Missouri, payable out of the general funds of said County of Knox, in the county treasury of said county, for the amount of said judgment, interest and costs, on or before the tenth day of April, 1880, and in default thereof they be immediately attached and stand committed for contempt."

The respondents, by their attorneys in said Court, waived service of said order, and entered their appearance to the same. Said County Court afterwards sued out a writ of error to the action of the Court. on the 9th day of March, 1880, returnable to the October term, 1880, of this Honorable Court, and the case is now here for determination.

The County Court afterwards made out and delivered to relator a warrant on the County Treasurer of Knox county as commanded by said peremptory writ of mandamus, and said order, which the Court will see by reference to U. S. ex rel. Davis vs. McGonigle, Treasurer of Knox County, No., 199, on the docket of this Court.

BRIEF.

1.

The question of a right to a special levy to pay these Missouri and Mississippi Railroad Bonds first arose in the case of the United States vs. Clark County, 95 U. S., 760, which was an application for a mandamus against Clark county, to pay judgments on bonds similar to those in the case at bar, by the levy of part of the tax of one-half of one per cent. for the year 1874, (which was omitted to be levied in that year,) and for the levy of a tax of one-twentieth of one per cent., which was omitted to be levied in the previous years, the bonds being issued January 1st, 1874. It was determined by this Honorable Court,

First, That until the bonds were issued there was no obligation resting on the county court to levy a tax of one-twentieth of one per cent.

Second, That there was no authority to order a levy in addition to the special tax of one twentieth of one per cent., of a tax exceeding the rate of one-half of one per cent. on the valuation of the taxable property, because the return showed for the year 1874, a county tax of one-half of one per cent. had had been fully levied and collected."

The Court, at the close of its opinion, makes use of the following language:

"In thus deciding we are not to be understood as maintaining all that is averred in the defendant's return to the alternative writ; we do not assert that the relator is without remedy against the county, or that his remedy is restricted to a resort to the proceeds of the special tax. It is enough for this that the judgment of the Circuit Court was correct on the pleadings."

The question was further considered in the case of the United States vs. County of Clark, (96 U. S., 211), which was a case praying for mandamus against the county Court of Clark County to pay similar bonds to those in suit at bar, wherein the questions were thoroughly presented, pro and con, by Judge Geo. W. McCrary, for the county, and Judge James Grant for relator. Mr, Justice Strong in delivering the opinion of the Court, held,

"First, That the act under which the bonds were issued gave plenary authority to the county to subscribe to the capital stock of the railroad company and to issue bonds therefor and imposed no limits upon the amount which it empowered the county to subscribe, and for the payment of which it authorized the issue of county bonds, leaving all to the discretion of the county court.

Second, That the limitation for a special tax in the charter was distinct from and in addition to the ordinary taxes which by other statutes existing at the time the county court was authorized to levy.

Third, That there is no provision in the act implying that the special tax alone should be applied to the payment of the bond.

Fourth, That the bonds in question were a debt of the county as fully as in any other obligation.

Fifth, That it was not to be inferred from a provision giving a creditor the benefit of a special tax fund, that it was intended to place him in a worse position than he would have occupied had no such provision been made."

And in conclusion, it was held that relator was entitled to a warrant on the county treasurer, for the judgment remaining unpaid, so that he might be enabled on its presentation to have it paid in its order out of the county treasury.

This case having laid down the principle that the relator was entitled to his county warrant, payable out of the general funds of the county, it was afterwards affirmed by this court, as we shall show.

In the case of the United States vs. Macon County, 99 U. S., 582, the question arose again, and all of the propositions in the case at bar, were adjudicated against the county. Chief Justice Waite delivered the opinion of the court, and held,

"First, That the bonds in question were debts of the county and that for any balance remaining due on account of principle or interest, after application of the proceeds of the special tax authorized, by that section, the holders were entitled to payment out of the general funds of the county."

Second, That when the debt was authorized, the power of taxation for its payment was limited by the act itself, and the general statutes in force at the time, to the special tax designated in the act, and such other taxes applicable to the subject as then were or might thereafter by general or special acts be permitted."

And the court further held—

That the tax of one-twentieth of one per cent. and the tax of one-half of one per cent. for general purposes on the taxable value of the property in the county was subject to the payment of these bonds; but that a special levy, *i. e.* a levy of a special tax in addition could not be ordered."

The question arose again in the case of Macon County vs. Huidekoper, which was argued at the same time as this last case, and the decision of the court in the case of the United States vs. County of Clark, (95 U. S., 211) was affirmed. 99 U. S., 592.

By these decisions every point raised in this case except the subdivision of the county revenue under laws passed subsequent to those decisions by the General Assembly of Missouri, were fully and completely adjudicated against defendant.

In the case of Ralls County Court vs. U. S., 105 U. S. 733, Chief Justice referring to this decision makes use of the following language:

"In the United States against the county of Macon, there was a special limitation of the power to tax, coupled with the authority to contract, and because the Legislature saw fit to say how much of a tax in addition to that otherwise provided, might be levied to meet the new and extraordinary obligation which

was contemplated, it was held that the prohibition against anything more was necessarily to be inferred."

So that we may say that five times this Honorable Court has affirmed the right of relator to his warrant, payable out of the general funds of the county in the county treasury.

II.

It is reasonable to suppose that these several decisions would have definitely disposed of the questions raised in this record, but the counsel for the county again seeks to have this Court pronounce judgment upon the subject.

We might well rest on the doctrine *stare decisis* and close this discussion here, but as some of the judges of this Court were not on the bench when these decisions were rendered, we will notice the reasons alleged for a reconsideration by respondent.

There are two reasons given by respondent why this court should change its views on this question:

1st. That the Supreme Court of the State of Missouri has, since these decisions, decided that the special tax of one-twentieth of one per cent. was the only fund that could be applied to the payment of these Missouri & Mississippi Railroad bonds; that the 13th section of that charter was a limit on the power of taxation, and that a warrant on the county treasury could not be issued to the holder of judgments on said bonds, payable out of the general funds of the county.

State ex rel. Watkins vs. Macon County Court, 68 Mo. 29.

2d. That the General Assembly of the State of Missouri, on March 19th, 1879, passed an act entitled "An act for the further protection of the county revenue funds of the State," which practically destroyed the general funds of the county and made all the funds special, and that therefore a warrant such as this Court has declared the relator entitled to could not be issued, because, by the provisions of that act, it would be unavailing,

See Sess. Acts of Mo., 1879, p. 191.

We respectfully insist that the decision of the State Court (68 Mo. 29) presents nothing new for the consideration of this court.

This decision of the State court, which was rendered in October, 1878, and the act of March 19, 1879, constitute a well-devised scheme to evade the effect of the decision of this court in the case of the United States vs. Clark County, 96 U. S. 211, and its subsequent decisions affirming that case. Judge Hough dissented, and Judge Napton, the other Missouri judge, who has uniformly held that the commercial obligations of the municipal corporations of the State should be paid, and set his face against repudiation in all forms, did not sit in the case.

In support of the reasoning in this case, the State court relies upon The State ex rel. vs. Shortridge, and holds that the bond-holders can only look to the funds which the thirteenth section of the charter, under which the bonds were issued, provides, and they have no authority of law to demand of the county court that they resort to another and different fund provided for other and different purposes; and cite three cases, viz: Campbell vs. Polk County, 49 Mo. 214; Kingsbury vs. Pettis County, 48 Mo. 208; Pettis County vs. Kingsbury, 17 Mo. 479.

These cases, on examination, will be fonnd to substantially hold that warrants drawn on special funds authorized by the Legislature cannot be paid out of the general funds, and the applicability of these cases depends on the correctness of the statement that the bond-holders cannot look to any fund except the tax of one-twentieth of one per cent.; which this Court has three times denied.

The court then discusses the purposes for which the expenditure or general funds of the county are raised, and holds that extraordinary indebtedness incurred by a county in issuing bonds for the payment of railroad subscription was not intended to be embraced in the term "expenses of the county," etc., giving the history of the legislation of Missouri on that subject, and coming to a conclusion in the following language:

> "It thus appears that the fullest provisions have been made by the General Assembly for the creation of a fund distinct from the general or common fund of a county, out of which to pay the indebtenness incurred by a county on account of subscription to stock of a railroad company, or bonds issued in pay-

ment thereof, which fund is to be kept separate from all other funds, and to be applied to that identical purpose and none other."

If this be the correct interpretation of the laws of the State of Missouri, then this Honorable Court instead of refusing a warrant payable out of the general funds, ought to order a warrant on the county treasurer, and further order a levy of a special tax sufficient to pay the same. In endeavoring to escape one horn of the dilemma, to wit: that the relator is not entitled to a warrant payable out of the general funds of the county, the Supreme Court of the State impales itself on the other horn, to wit: that relator is entitled to a special tax to pay his judgment on county bonds.

They recognize this by following the language quoted, and attempting to limit it in these words:

"These various provisions of law have been referred to *for the sole purpose of establishing the proposition that for the payment of such obligations resort could only be had to the special fund*, and that it never was the intention of the Legislature that the common fund raised by taxation to defray the expenses of the county could be made chargeable with their payment, but on the contrary that such latter fund was devised, provided and intended to be charged with the payment of such ordinary expenses incurred in conducting the county government as has been hereinbefore indicated."

The legitimate result of such reasoning, is that the Legislature intended that counties might issue bonds, to any amount, in their discretion, to the Missouri and Mississippi Railroad Company, and further intended that they should never be paid unless the meager fund of one-twentieth of one per cent., provided in the thirteenth section of said charter, would be sufficient to pay the same.

The reasoning of Judge Strong, speaking for this Honorable Court in the case of U. S., ex rel. vs. Clark County, 96 Mo., 211, so overwhelmingly refutes such an absurd position, that we will not detain this court longer in discussing it.

After considering the effect of paying relator's judgment out of the general funds of the county, the court comes to the conclusion that such a principle would overthrow the county governments, and impair the power of the State to maintain itself. This is an additional argument

for a special tax, and could not occur but for the attempt to limit the payment of these bonds to the one-twentieth of one per cent.

The next proposition made by the court, is that mandamus will not lie to compel the county court to do a judicial act; and it then proceeds to hold that the ascertaining the amount due, by the county court, and the fund out of which it is to be paid, is a judicial act; ergo, mandamus will not lie. This is directly in the teeth of all the former decisions of the Supreme Court of the State of Missouri on this subject.

The court next holds that mandamus will not lie, because the statutes provide for an appeal from the action of the county court.

It is sufficient to say that it will be an anomaly in law for an appeal to lie from the action of the county court in issuing a county warrant to pay a judgment rendered in the United States Circuit Court, from that county court to the State Circuit Court, and thence to the State Supreme Court.

Judge Hough concurring in the judgment of the court, but dissenting from the reasoning of the court, uses the following language:

> "I adhere to the decision of this court in the case of the State vs. Shortridge, 56 Mo. 126, *and if this were a proceeding to compel the county court to levy a tax to pay the bonds, it would be directly in point.* I doubt, however, whether we are at liberty to go behind the judgment in favor of the relator, and inquire into the cause of action, or obligation upon which it is founded, and then say that the judgment must be paid according to the terms of the contract upon which it is based,' &c., &e.

The doctrine of this Watkins case vs. Macon County, (68 Mo. 29), is squarely overthrown by the same court, and Judge Hough followed, in the case of the State ex rel. Wilson vs. Rainey, 74 Mo., 229, decided in 1881, Norton, J., delivering the opinion, where it was held—

> "That on the rendition of a judgment on bonds issued by Greene county, by the Federal courts in favor of the holder thereof, the cause of the action was merged in the judgment, and the effect of the judgment was to establish conclusively against

the county a debt which it was bound to pay, and levying the tax under question to pay it having been made, obedient to the mandamus of the court rendering the judgment, and in conformity to the laws of the state then in force, authorizing county courts to levy taxes for the payment of county indebtedness, the payment of such taxes cannot be a oided on the ground that the bonds and coupons for which the judgment was rendered were void; *for that question was conclusively determined against the county in the judgment rendered*, and will so remain until reversed or annulled by some court having power to review it."

This was held in a case where the bonds in question had been declared void by the State Supreme Court.

In the case of Phelps County vs. Bishop, (46 Mo. 68), it was held, that—

"The auditing of a demand against the county by the county court is not a judicial proceeding, and the entry of its allowance or rejection is not a judgment. The county judges are the agents, the representatives, of the county, and it is their duty to audit and pay all just and lawful claims against it; and in performing that duty, they act precisely as would the agents of a private corporation. For that purpose they do not constitute a court in its proper sense, and the entry upon the record of their proceedings, is not a judicial record. If a specific claim be rejected, the count may be sued upon it, and its rejection is no *res adjudicata*."

To the same effect, see the County Court of Marion County vs. Wm. B. Phillips, (45 Mo., 75), and cases cited.

In the case of Reppy vs. Jefferson county (47 Mo. 66), it was held that the fact that an appeal lies upon the action of the county court in auditing claims against the county is no indication that such action is a judgment, it being but a statutory mode of bringing the county into the Circuit Court without original process, and the claimant may avail himself of it or commence suit.

See also the State, ex rel., Carroll county, vs. Roberts, 60 Mo., 402.
Same vs. same, 62 Mo., 388.
State, ex rel., Bates county vs. Smith, 65 Mo., 464.

In the case of White vs. Clay county, 46 Mo., 231, it was held that the relator is not entitled to a peremptory

mandamus to enforce the collection of an ordinary county indebtedness prior to that indebtedness being reduced to judgment, inferentually deciding that where judgment is rendered mandamus will lie to enforce collections.

State, ex rel., &c., vs. Bollinger county court (48 Mo., 475.)

It may be well to note in passing that in the case of the State, ex rel., vs. Macon County Court (41 Mo. 453), the Supreme Court of the State of Missouri compelled by mandamus the County Court of Macon county to issue $175,000 in bonds of that county to the railroad company, after having its attention called to the tax levy of one-twentieth of one per cent. provided for in the thirteenth section of that act; and it must have known that the sum provided by that section would not have been sufficient to pay the interest on so large an amount of bonds, and if the general funds of the county could not be resorted to, there must have inevitably been a default the first year in payment of interest.

This Watkins case not only conflicts with the prior decisions of the State Supreme Court on this subject, but it comes within the rule so often laid down by this court that subsequent decisions of the Supreme Court of the State, giving different constructions to laws from those accepted at the time of the issuing of bonds, will not invalidate rights accruing under the former constructions.

County of Cass vs. Johnston, 95 U. S., 360.
Douglass vs. County of Pike, 101 U. S., 677.
Dorlington vs. County of Jackson, 101 U. S., 688.

The decisions of this court as to relator's right to resort to the general funds of the county are thoroughly consistent with principle, and commend themselves to reason and accord with the general principles laid down by this court on similar questions.

In the case of the United States vs, New Orleans, 98 U. S., page 381 (Judge Field delivering the opinion of the whole court) after discussing the authorities on the subject, and laying down the principle that where a lawful debt was incurred by the county, and it had no other than the ordinary mode of providing for and extinguishing it, it follows, of course, that the ordinary mode of raising the means must

be resorted to, namely, to provide for it in the annual assessments of taxes for county purposes. Judge Field makes use of the following language, on page 393:

> "When authority to borrow money or incur an obligation in order to execute a public work is conferred upon a municipal corporation, the power to levy a tax for its payment, or the discharge of the obligation accompanies it, and this, too, without any special mention that such power is granted. This arises from the fact that such corporations seldom possess, so seldom, indeed, as to be exceptional, any means to discharge such pecuniary obligations except by taxation. It is, therefore, to be inferred, as observed by this court on Loan Association vs. Topeka (20 Wall, 660), 'That when the legislature of a state authorizes a county or city to contract a debt by bond, it intends to authorize it to levy such taxes as are necessary to pay the debt, unless there is in the act itself, or in some general statute a limitation upon the power of taxation which repels such an inference.'

This doctrine is fortified by referring to the cases of the The Commonwealth vs. Commissioners of Allegheny county, 37 Pa. 277; Lowell vs. Boston, 111 Mass. 460; Hasbrouck vs. Milwaukee, 25 Wisconsin, 122: Parsons vs. City of Charleston, Hughes' Reports, 282, (the opinion being delivered in this case by his honor, the Chief Justice.)

The court furthermore held in that case that

> "The indebtedness of the city of New Orleans is conclusively established by the judgments recovered. The validity of the bonds upon which they were rendered is not now open to question; nor is the payment of the judgment restricted to any species, or property, or revenues, or subject to any conditions. The indebtedness is absolute. If there were any question originally as to a limitation of the means by which the bonds were to be paid, it is cut off from consideration now by the judgments. If a limitation existed, it should have been insisted upon when the suits on the bonds were pending, and continued in the judgments. The fact that none is thus continued is conclusive on this application that none existed."

This case was re-affirmed in three other cases of the same character on its authority, and in all the judgment of the lower court was reversed and a mandamus awarded.

In the case of Ralls County Court vs. United States,

105 U. S. 733, Chief Justice Waite delivering the opinion of the court, it was held,

First, That everything which was a defense of the bonds relating to the validity of the bonds on which the judgment was obtained, was conclusively settled by the judgment, and that such defence could not be again heard in mandamus proceedings.

Second, That when the bonds were merged in the judgment, they carried with them into the judgment all the remedies which in law formed a part of their contract obligations, and these remedies may still be enforced in all appropriate ways, notwithstanding the change in the form of the debt.

Third, That in the absence of special limitation on the taxing power, coupled with the authority to contract, that the authority to contract a debt carried with it an implied authority to levy taxes to meet it at maturity."

In the case of the Mayor vs. Lord, (9 Wallace, 409), Justice Swayne delivering the opinion of the court.

"It was held when a creditor has judgment at law for a debt against a city on city bonds, the city cannot set up any defense on application for mandamus, that the bonds were not sanctioned by a requsite popular vote; the court saying the respondents are concluded by the judgment and cannot go behind it to raise any question touching any question of either of the causes of action upon which it was rendered."

The case of Supervisors vs. U. S., 4 Wallace, 435, (Justice Swayne delivering the opinion of the court), was a case where a mandamus was awarded to levy a tax to pay a judgment against a county, wherein the statute of Illinois provided that warrants upon the treasurer should be given for judgments rendered against the county, and where such warrant was applied for and refused, and there were no funds in the county treasury with which to pay the judgment.

III.

The act of 1879, entitled "an act for the better protection of the county revenue funds of the State," approved March 19, 1879, Session acts Mo 1879, 191, is no defense to relator's remedy as sought in this case. It is so evident a legislative attempt to dissipate the general funds of the

county into special funds, and to thwart the law as laid down by this Court, *i. e.*, that relator was entitled to his warrant payable out of the general funds of the county, that comment is unnecessary. And when it is remembered that this act, and another entitled "an act concerning the assessment, levy and collection of taxes, and the disbursement thereof," approved March 8, 1879. Session acts Mo. 1879, 185, were the works of the indefatigable Senator from Knox county, who is also an attorney of record in this case, and are commonly known in Missouri as the "Cottey Acts," this intention of the Legislature becomes conclusive.

Both these acts are pleaded in the record as excuses for not issuing the warrant claimed by relator. The first of these acts "died early." It was approved March 8th, plead in the United States Circuit Court the next day as a defense to a petition for mandamus, and held unconstitutional the day after. The other did not long survive it, as Judges Dillon, McCrary, Treat and Krekel have disregarded it in all the cases coming before them involving its validity.

In the case of United States vs. Lincoln county, 5 Dillon, 184, the effect of subsequent legislation of the Missouri Legislature on judgments of creditors of counties was thoroughly considered by Judges Dillon and Treat, and the act of March 8, 1879, held to be unconstitutional.

And in the case of the United States, ex rel., Foote vs. Johnson, 5 Dillon, 207, in a very elaborate opinion, Judge Krekel went over the whole ground of the effect of subsequent legislation on the rights of bondholders, and cited all the cases then decided by the United States Supreme Court, and by the Supreme Court of the State of Missouri, and other courts, and held such subsequent legislation to be unconstitutional; in which opinion both Judges Dillon and Treat concurred. We ask consideration of these two cases, as they fully develop the opinion of the eminent Federal, circuit and district judges in Missouri on Missouri's Constitution and legislation as applicable to these bond matters.

In Wilson vs. Rainey, 74 Mo., 229, the act of March 8th, 1879, was held by the Supreme Court of Missouri to have no bearing, as it referred to taxes thereafter to be assessed and collected, and not to such taxes which had been levied at the time such act was passed, and which were in

process of collection; clearly recognizing the doctrine that that act could not interfere with the rights of parties which had accrued previous to its enactment.

In Ralls County Court, vs. United States, 105 U. S., 733, it was held—

"That all laws of the State which have been passed since the bonds in question were issued, purporting to take away from the county courts the power to levy taxes necessary to meet the payments, are invalid; and that under a well-settled rule of decision in this court, the Circuit Court had authority by mandamus to require the county court to do all the law, when the bonds were issued, required it to do, to raise the means to pay the judgment, or substantially equivalent."

In Walker vs. Whitehead, 16 Wallace, 314, it was held by the court—

"That the laws which exist at the time of making the contract, and in the place where it is made, and to be performed, enter into and make a part of it. This embraces these laws alike which affect its validity and enforcement. The remedy or means of enforcing the contract is a part of that obligation, which the Constitution protects against being impaired by any laws passed by the state."

In the case of Wolf vs. New Orleans, 103 U. S., 358, Justice Field delivering the opinion of the court, on the authority Van Hoffman vs. City of Quincy, 4 Wall., 535, and distinguishing Meriwether vs. Garrett, 102 U. S., 472, held—

"That the prohibition of the Constitution against the passage of laws impairing the obligation of contracts, applies to the contracts of the State and to those of its agent acting under its authority, as well as to contracts between individuals, and that that obligation is impaired in the sense of the Constitution when the means by which a contract at the time of its execution could be enforced, that is by which the party could be obliged to perform it, are render less efficacious by Legislation operating directly upon these means.

As observed by the Court in the case cited—

"Without the remedy, the contract may indeed, in the sense of the law, be said not to exist, and its obligations to fall within the class of all those moral and social duties which depend for their fulfillment wholly upon the will of the individual.

> The ideas of validity and remedy are inseparable, and both are parts of the obligation which is guaranteed by the constitution. The obligation of a contract 'is the law which binds the parties to perform their agreement.' "

And in consonance with this doctrine, it was held—

> "That the act of the Legislature of Louisiana, limiting the power which the city of New Orleans possessed when the bonds upon which relator has recovered judgment were issued, to levy a tax for their payment, was invalid, and that in thus limiting the power without providing other adequate means of payment of the bonds, the Legislature has impaired the obligation of the contract between her and the city."

Louisiana vs. New Orleans, 102 U. S., page 203.

States may pass remedial laws, but not such as impair vested rights or create personal liabilities, or impose new obligations or duties.

So long as contracts are submitted to the ordinary and regular course of justice, and existing remedies are preserved, in substance, the obligation of the contract is not impaired; but if the change affects rights and interests it is so far a violation.

Van Hoffman vs. City of Quincy, 4 Wall., 535.
Greene vs. Biddle, 8 Wheaton, 1.
Bradley vs. Green, 7 Humphrey, 730.
Rid vs. Flanders, 31 N. H., 304.
D. Cordova vs. City of Galveston, 4 Texas, 470.
Hope vs. Johnston, 2 Yerg., 125.
Van Zandt vs. Waddell, 2 Yerg., 260.
Hoffin vs. Rich, 45 Maine, 507.
Kennebeck vs. ———, 2 Maine, 475.
Holmes vs. Lansing, 3 Jons, Cas. 73.
U. S. vs. Mobile, 12 Fed. rep., 768.

In the case of Railroad Company vs. McClure, 10 Wallace, 511, this doctrine was applied to the constitution of a State which impaired the obligation of the contract in question.

See also Dodge vs. Woolsey, 18 How., 331.

In the case of Douglass vs. the County of Pike 101, U. S. page 677, it was held,

"In reference to decisions of the State Supreme Court declaring township bonds invalid after having declared them valid in previous decisions, that such subsequent decisions in no way effected the validity of the bonds, on the ground that after a statute has been settled by judicial construction, that the construction becomes, as far as contract rights are concerned, as much a part of the statute as the text itself, and a change by decision is to all intents and purposes the same in its effects on contracts as an amendment of the law by means of legislative enactment."

If the decisions of Courts, are held invalid, when they impair the obligation of the contract, how much more would a statute be held invalid which practically takes away the entire remedy which the creditor had at the time his bonds were issued, by subdivision of the funds to which the courts declare him to be entitled, and their appropriation for different and other purposes not contemplated at the time the bonds were issued.

The act of March 19, 1879, providing for subdivision of the general funds of the county, in clearly no defense to the issue of relator's warrant. It cannot be held to apply to obligations existing before its passage; it impairs the obligation of the contract entered into between relator and the county, and is contrary to the Constitution of the United States.

IV.

So far we have presented this case on the theory that this court will not overrule the several cases wherein it has held the relator entitled to a warrant on the county treasurer, payable out of the general funds of the county.

The respondent seeks, however, to re-open the whole question and to have this court declare that the relator is limited to the special tax of one-twentieth of one per cent. named in section 13 of the Charter of the Missouri and Mississippi Railroad Company. If this court determines to do this, and to overrule these cases, we respectfully submit that its judgment ought not to confine relator to the one-

twentieth of one per cent., but should rather declare relator's judgment payable by levying a special tax on the property in Knox County.

Recurring to the decisions cited herein, we find it is uniformly held that the authorization of a municipal debt impliedly carries with it the power to provide for its payment in the absence of limitations.

We find that the debt is merged into the judgment, and it becomes absolutely a debt of the county.

We find that but for the limitation in section 13 of the Charter in question, a special levy would be awarded to pay these bonds and thus relieve the general county funds from this burden.

We find that the laws in force at the time the bonds were issued are a part of the contract and cannot be changed or modified by subsequent statute or decison to the detriment of a party contracting in reference thereto.

If we refer to the General Statutes of Missouri, 1865, in force at the time these bonds were issued, we find that by section 17, p. 338, counties, cities and towns were authorized to subscribe to the stock of railroads on a vote of 2-3 of the qualified voters; that by section 18— such subscriptions being made, referring to section 17, the power to issue bonds and levy special taxes to pay such subscriptions, was given to such county courts, etc.

We find in addition to this, section 21, which specifically confers in the most general language the power on "any county court, city or town, which has heretofore subscribed to the capital stock of any railroad in this State * * * the power to provide funds to pay such subscription as are granted to county courts and cities by this chapter, and may levy a special tax to pay the interest on their bonds, or to provide a sinking fund to pay the principal."

By section 48, p. 343, all the powers and privileges conferred on railroads organized under general laws, were extended to all railroads within the State then existing or those formed afterwards.

Both these sections were in existence in 1855, and reenacted in 1865 and 1872. (See Wag. Stat. 305, 306–312).

These sections are distinct from section 18, giving power to levy taxes for subscription, under the general law, and either are of no force at all or apply to the case at bar.

Again, the 13th section of the charter of the Missouri and Mississippi Railroad Company provides for a sinking fund to pay off the bonds as they mature, and were intended as additional security to help float the bonds on the market. Such construction is in harmony with the other legislation of the State, but the construction contended for puts the legislative intent in a ridiculous light.

The 11 section, article 10, of the Constitution of 1875, specially limiting taxation for county purposes to one-half of one per cent., excepts taxation for the payment of valid indebtedness.

So does the law of the State passed in conformity thereto.

The sections of the Missouri Statutes in reference to county warrants, county Treasurer snd County Courts, as applicable to this case, have been commented on and construed by this Court. We forbear further elaboration, but have printed the same in an appendix hereto, for convenience of the Court.

We respectfully submit that this Court will either adhere to the decisions it has made herein, or will declare that these Missouri and Mississippi Railroad bonds are payable out of special taxes to be levied on the property taxable by law in Knox county.

GEORGE H. SHIELDS,
For Relator.

APPENDIX.

The following abstract of the Laws of Missouri, in force at the time of the issuance of the Knox County bonds in question, and which are involved in this case, is printed for the convenience of the Court:

The General Statutes of Missouri, 1865, p. 225, chapter 38, "of County Treasuries," provides as follows:

SECTION 7. He (the County Treasurer) shall keep his office at the county seat of the county for which he was elected, and shall attend at the same during the usual business hours, *and shall receive all moneys payable into the treasury thereof, and disburse the same on warrants drawn by order of the County Court.*

SECT. 8. He shall procure and keep a well-bound book, in which he shall make an entry of all warrants presented to him for payment, which shall have been legally drawn for money by the county court of the county of which he is the treasurer, stating correctly the date, amount, number, in whose favor it is drawn, and the date the same was presented; *and all warrants so presented shall be paid out of the funds mentioned in such warrant, and in the order in which they shall be presented for payment.*

SECT. 9. No county treasurer shall refuse the payment of any warrant legally drawn upon him and presented for payment, for the reason that warrants of prior presentation have not been paid, when there shall be money in the treasury belonging to the fund drawn upon, sufficient to pay such prior warrants, and any such warrant so presented; but such treasurer shall as *he shall receive money into the treasury belonging to the fund so drawn upon, set the same apart for the payment of warrants previously presented, and in the order presented*, so that no warrant of subsequent presentation shall remain unpaid by reason of the holder of the same failing to present such warrants for payment, after funds shall have accrued in the treasury for the payment of the same; *provided, however*, that nothing herein contained shall prevent the treasurer from receiving from the collector all scrips and warrants received by him in payment of county tax; provided, however, before the treasurer shall receive such scrips and warrrants, the collector shall make out a list of such scrips and warrants, under

oath, specifying the number and amount thereof, and from whom received; and said list shall be filed and preserved by the treasurer.

SECT. 10. No interest shall be paid on any warrant presented for payment, after funds for the payment of the same shall have been set apart, the date of which setting apart shall be registered by the proper county treasurer.

ECT. 11. He shall keep a just account of all moneys received and disbursed, and regular abstracts of all warrants drawn in the treasury and paid.

SECT. 19. All collectors, sheriffs, marshals, clerks, constables and other persons chargeable with moneys belonging to any county, shall render their accounts to, and settle with the county court, at each stated term thereof, *pay into the county treasury any balance which may be due the county*, take duplicate receipts thereof, and deposit one of the same with the clerk of the county court. within five days thereafter.

SECT. 27. It shall be the duty of the clerk of the county courts: First, to keep regular accounts between the treasurer and the county, charging him therein with all moneys paid into the treasury, and crediting him with the amount he may have disbursed between the periods of his respective settlements with the court; Second, to keep just accounts between the county and all persons, bodies politic and corporate, chargeable with moneys payable into the county treasury, or who may become entitled to receive moneys therefrom; Third, to file and preserve in his office all accounts, vouchers and other papers, pertaining to the settlement of any account to which the county shall be a party, copies whereof, certified under the hand and seal of the clerk, shall be admitted to be read in evidence in all courts of law and elsewhere; Fourth, *to issue warrants on the treasury for all moneys ordered to be paid by the court*, keep an abstract thereof, present the same to the county court at every regular term, balance and exhibit the accounts kept by him, as often as required by the court, and keep his books and papers at all times ready for the inspection of the same, or any judge thereof.

SEC. 28. Each county court shall have power to audit, adjust and settle all accounts to which the county shall be a party; *to order the payment out of the county treasury of any sum of money found due by the county;* to enforce the collection of money due the county; to order suit to be brought on the bond of any delinquent, and require the circuit attorney for the county to commence and prosecute the same; to issue all necessary process to secure the attendance of any person, whether party or witness, whom they may deem necessary to examine in the investigation of any account;

and if any such person, being served with such summons, shall not appear, according to the command thereof, the said court may compel his appparance by attachment; and in order to procure the exhibition or delivery to them of any accounts, books, documents or other papers, the said tribunal may issue a summons, directed to the person in whose custody or care the said accounts, books, documents or other papers may be, commanding him to deliver, or transmit the same to the said tribunal, which summons shall be served by the sheriff; and if the person mamed in such summons refuse to appear with, or transmit the accounts, books, documents or papers, or show good cause why he does not, at the time appointed for his appearance, the said tribunal may enforce the delivery thereof by attachment; and the said courts and tribunals, respectively, may examine all parties and witnesses on oath, touching the investigation of any accounts, and may commit to jail any person who shall refuse to answer any lawful question.

SECT. 29. It shall be the duty of the several tribunals transacting county business in the several counties of the State at the regular term of their respective courts in each year, to ascertain the amount of moneys that have accrued in their several counties from the sale of the sixteenth sections, or lands selected in lieu thereof, situate in their counties; the amount of interest in arrear on the loan of said moneys, and the amount due by each borrower thereof, respectively; the amount of the three per cent. fund belonging to the county, and the interest that has accrued on the same; the amount of interest in arrear and those from whom it is due; and all appropriations that have been made of said fund by the county court, specifying the objects of appropriation. And the said tribunals shall at the same time, *make out a statement of the amount of debt due by their counties, and a detailed account of the receipts and expenditures of the same for the preceding year* showing from what officer, and on what account any money has been received and to what individuals, and on what account any money has been paid, and shall strike the balance, showing a deficit, if any, and the balance in the treasury, if any.

SECT. 31. When the court shall ascertain any sum of money to be due from the county, they shall order their clerk to issue a warrant therefor, in the following form:

Treasurer of the county of ....., pay to ..... , ... dollars, OUT OF ANY MONEY IN THE TREASURY APPROPRIATED FOR COUNTY EXPENDITURES, (or express the particular fund as the case may require). Given at the court house, this ..... day of ....., 18 ..... By order of the county court.

A. B., President.

TEST: C. D., Clerk.

SECT. 32. Every such warrant shall be drawn for the whole amount ascertained to be due to the person entitled to the same, and but one warrant shall be drawn for the amount allowed to any person at one time, and shall be written or printed in Roman letters, without ornament; it shall be signed by the president of the court whilst the court is in session, attested by the clerk, and numbered progressively throughout each year.

SECT. 33. No county treasurer in this State shall pay any warrant drawn on him, unless such warrant be presented for payment by the person in whose favor such warrant is drawn, or by his assignee, executor or administrator; *and when presented for payment, if there be no money in the treasury for that purpose, the treasurer shall so certify on the back of the warrant, and shall date and subscribe the same.*

SECT. 34. All warrants drawn on the treasurer of any county shall be assignable, and every assignment of any such warrant shall be in the following form;

For value received, I assign the within warrant to A. B., this ..... day of ....., 18.....
(Signed). C. D.

No blank endorsement shall transfer any right to a warrant, nor shall it authorize any holder to fill up the same.

SECT. 35. No county treasurer shall pay any warrant to any other than the person in whose favor the same is drawn, or his executor, or administrator, or the person to whom the same has been assigned, in the manner above directed. And any treasurer who shall violate the provisions of this chapter, shall be deemed guilty of a misdemeanor in office, and for every such violation shall be fined in a sum not less than ten nor more than five hundred dollars, to be recovered by indictment.

In order that this court may see the significance of requiring the warrant to designate the particular fund on which it was drawn, we print for the convenience of the court an abstract of some of the laws of Missouri in force when the bonds were issued, showing the specific objects for which the county court might raise funds by special taxation, or appropriate money from the county treasury.

General Statutes of Missouri, 1865, pp. 300–301, chapter 54, "Of the Fund for the Construction of Roads, Canals and Bridges," provide as follows:

SECT. 6.—The apportionment and division of the fund (i. e. the three per cent. fund) among the counties, shall be made at the Treasury, by the Treasurer and State Auditor, who shall, without delay, give notice thereof, and that the money is ready to be paid to the respective counties, by a letter written to the clerk of the county court of each county.

SECT. 7.—Each county court shall have power to draw on the state auditor for a warrant on the state treasurer, for the amount of the share to which such county is entitled; which, when received, shall be placed in the county treasury, and constitute a separate und, to be called, the "county road and canal fund," and shall be managed, stated and accounted for separately from the general funds of the county.

SECT. 10.—The county court of each county shall have control of the county road and canal fund, and shall cause the same to be applied to the construction and improvement of roads, bridges or canals, and to no other object.

General Statutes of Missouri, 1865, p. 289, chapter 52 "Of Public Roads," provide as follows:

S CT. 6.—For the purpose of opening and keeping in repair roads, and in order to raise the necessary funds to pay the expenses of any or all of said improvements, the county courts are hereby empowered and authorized to levy a special tax of three and one-half mills upon the dollar of the taxable property of the county, on all property taxable by law; said levy to be made at the time, and in the same manner as the county revenue is now levied, that hereafter all property, whether belonging to non-residents or others subject to pay a state and county tax, shall be made subject to pay a road tax, and the collection thereof to be made and enforced in the same way and manner as the state and county revenue now is or hereafter may be, by law, directed to be made and enforced.

SECT. 35.—The taxes authorized to be levied, by this act, upon the lands of non-residents, shall be placed in a separate column of the state and county tax book, and collected as other state and county taxes; and when so collected, shall be paid into the county treasury to be expended in the road district in which such lands are situated; and, for this purpose, the county court shall make proper apportionments among the road overseers, and issue warrants to the county treasurer, in favor of the respective overseers, for their respective apportionments.

General Statutes of Missouri, 1865, p. 232, chapter 39, "Of the Support of the Poor," provide as follows:

SECT. 1.—Poor persons shall be relieved, maintained and supported by the county of which they are inhabitants.

SECT. 4.—The county court in each county, * * * shall, from time to time, and as often and for as long a time as may be necessary, provide, at the expense of the county, for the relief, maintenance and support of such persons.

SECT. 8.—Such county may cause to be erected * * * a poor house, etc., etc., and may levy upon their respective counties such sum as will be sufficient to pay the purchase money and to defray the necessary expenses.

SECT. 12.—The sum levied upon the county, by virtue of the provisions of this chapter, shall be levied and collected in the same manner that county taxes are levied and collected; * * *

SECT. 13.—The treasurer of the county shall demand such funds whenever directed by the county court, and his duty in relation thereto shall be the same as that prescribed by law in relation to other county funds.

SECT. 14.—The treasurer shall keep the account of such funds separate from all other accounts.

Under the school law in force at the time these bonds were issued, t e school funds were also kept in the county treasury, but were paid out on the orders of the clerks of the township Boards of Education. (See sections 27, 28, 30 and 31; Chap. 46; Gen. Stat. Mo. 1865, pages 263 to 265.)

The bridge fund, or funds for building bridges, was raised by special taxation in some cases, and were also kept by treasurer as special funds. (See sections 2, 11, and 13; Chapt. 53; pages 298 to 299; Gen. Stat. Mo. 1865).

The following is the act of the Legislature relied on by respondent to destroy the relators remedy, and to dispose of the general funds:

AN ACT FOR THE BETTER PROTECTION OF THE COUNTY REVENUE FUNDS OF THE STATE. SESSION ACTS MO. 1879, P. 191.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECT. 1.—The county courts of the several counties of this state are hereby authorized and empowered, at the first regular term of such court, after the taking effect of this act, and at the May term every year thereafter, to appropriate, apportion and subdivide ALL THE REVENUES collected and to be collected, and moneys received, and to be received, in the various counties of the state, for county purposes, in the following order:

FIRST.—A sum sufficient for the payment of all the necessary expenses that may be incurred for the care of paupers and insane persons of such county.

SECOND.—A sum sufficient for the payment of all the necessary expenses for the building of bridges and repairing of roads, including the pay of road overseers of such county.

THIRD.—A sum sufficient for the payment of the salary of all county officers where the same is, by law, made payable out of the ordinary revenues of the county.

FOURTH.—A sum sufficient for the payment of the fees of grand and petit jurors, judges and clerks of election, and fees of witnesses for the grand jury of the county.

FIFTH.—A sum sufficient for the payment of the other ordinary current expenses of the county, not herein before specially provided for, which shall be known and designated as the contingent fund of such county. *Which last sum shall in no case exceed one-fifth of the total revenue of such county for county purposes for any one year.*

SECT. 2.—The county courts of the various counties of this state are hereby authorized and empowered, at the first regular term of such court after taking effect of this act, and at the May term every year thereafter, to make an order and cause the same to be spread upon the records of such court, setting apart, appropriating, apportioning and subdividing the revenues of any county for county purposes, as the same is set forth and specified in section one of this act, and when the order shall thus be made and

spread upon the records of any county in the State, the moneys so set apart, appropriated, apportioned and subdivided shall be held to to be a sacred fund for the purpose for which it has been desiguated; *and the county court thus making the order shall have no power to divert the same or to permit the funds thus set apart to be drawn from the treasury of such county, except by warrants issued by order of such court on the respective funds so set apart*, and for the purposes in section one of this act specified and set forth: Provided, that nothing in this act shall be so construed as to authorize any county court in this State to make a levy for county purposes greater than that prescribed in section 11. of article 10 of the Constitution.

SECT. 3.—It shall be the duty of the county treasurer *to separate and subdivide the revenues of such county in his hands and as they come into his hands, in compliance with such order of court and the provisions of this act;* and it shall be his duty to pay out the revenues thus subdivided, *on warrants* issued by order of the court, *on the respective funds* so set apart and subdivided, *and not otherwise;* and for this purpose the treasurer shall keep a *separate account with the county court of each fund*, which several funds shall be known and designated respectively as the pauper fund, road and bridge fund, fund for the payment of the salary of county officers, fund for the payment of fees of grand and petit jurors, judges and clerks of elections, and witnesses for the grand jury, and contingent fund; and *no warrant shall be paid out of any fund other than that upon which it has been drawn* by order of the court as aforesaid. Any county treasurer or other county officer who shall fail or refuse to perform the duties required of him or them under the provisions of this act, and in the express manner provided and directed, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one hundred dollars, and not more than five hundred dollars, and, in addition to such punishment, his office shall become vacant.

SECT. 4. When a demand against the county is presented to the county court, the usual form of entry may be exemplified thus: A. B., vs. ..... county. The account of A. B. for the sum of ..... dollars being presented and inquired into, it is found by the court that the sum of ..... dollars is due him from the county, payable out of (express the particular fund as the case may require), and for which the clerk is ordered to issue a warrant. When the court shall ascertain any sum of money to be due from the county, they shall order their clerks to issuse a warrant therefor in the following form: Treasurer of the county of ..... pay to ....., ... dollars *out of any money in the treasury appropriated for* (express the particular fund as the case may require). Given at the court house, this ..... day of ....., 18....., by order of the county court. A. B., President. Attest. C. D., Clerk.

SECT. 5. All acts and parts of acts inconsistent with the provisions of this act be, and the same are hereby repealed.

SECT. 6. The proper expenditure of the revenues collected for county purposes, their appropriation, apportionment and subdivision for the purposes for which they are levied and collected, and the maintenance of the credit of county governments, creates an emergency requiring this act to take effect at once; therefore this act shall take effect and be in force from and after its passage.

Approved March 19th, 1879.